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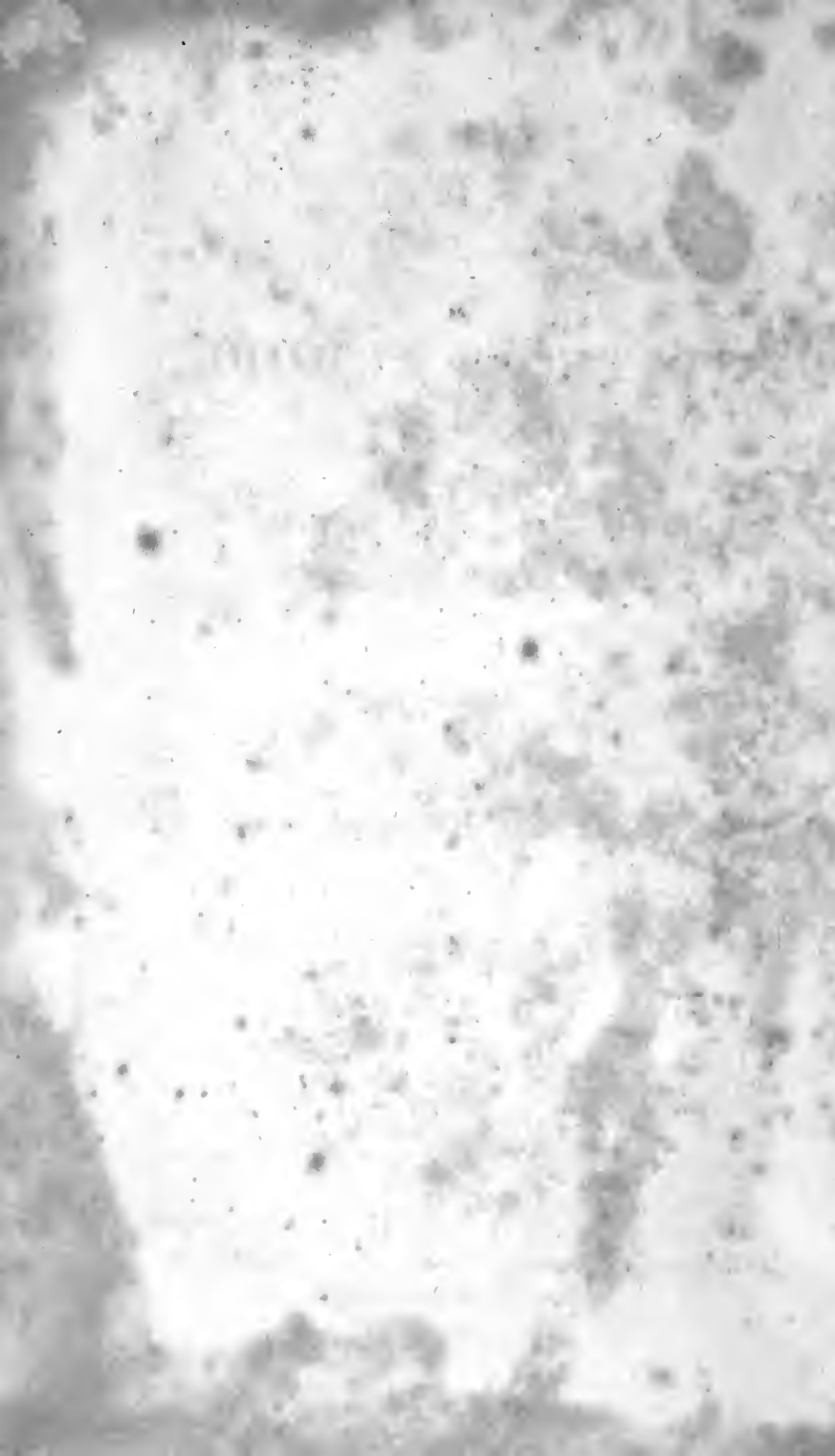
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**VIEW**

OF THE

**STATE OF EUROPE**

DURING

**THE MIDDLE AGES.**

IN FOUR VOLUMES.

✓  
**BY HENRY HALLAM, ESQ.**

Ἐκ Χάος δ' Ἐγεβός γε μέλαινά γε Νύξ ἐγένοντο·  
Νυκτὸς δ' αὖτ' Αἰθήρ γε καὶ Ἡμέρη ἐξεγένοντο.

ΗΣΙΟΔΟΣ.

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## PREFACE.

IT is the object of the present work to exhibit, in a series of historical dissertations, a comprehensive survey of the chief circumstances that can interest a philosophical inquirer during the period usually denominated the Middle Ages. Such an undertaking must necessarily fall under the class of historical abridgements; yet there will perhaps be found enough to distinguish it from such as have already appeared. Many considerable portions of time, especially before the twelfth century, may justly be deemed so barren of events worthy of remembrance, that a single sentence or paragraph is often sufficient to give the character of entire generations, and of long dynasties of obscure kings.

*Non ragioniam di lor, ma guarda e passa.*

And even in the more pleasing and instructive parts of this middle period, it has been my object to avoid the dry composition of annals, and aiming, with what spirit and freedom I could, at a just outline rather than a miniature, to suppress all events that did not appear essentially concatenated with others, or illustrative of important conclusions. But as the

modes of government and constitutional laws which prevailed in various countries of Europe, and especially in England, seemed to have been less fully dwelt upon in former works of this description than military or civil transactions, while they were deserving of far more attention, I have taken pains to give a true representation of them, and in every instance to point out the sources from which the reader may derive more complete and original information.

Nothing can be farther from my wishes than that the following pages should be judged according to the critical laws of historical composition. Tried in such a balance they would be eminently defective. The limited extent of this work, compared with the subjects it embraces, as well as its partaking more of the character of political dissertation than of narrative, must necessarily preclude that circumstantial delineation of events and of characters, upon which the beauty as well as usefulness of a regular history so mainly depends. Nor can I venture to assert that it will be found altogether perspicuous to those who are destitute of any previous acquaintance with the period to which it relates; though I have only pre-supposed, strictly speaking, a knowledge of the common facts of English history, and have endeavoured to avoid, in treating of other countries, those allusive references, which imply more information in the reader than the

author designs to communicate. But the arrangement which I have adopted has sometimes rendered it necessary to anticipate both names and facts, which are to find a more definite place in a subsequent part of the work.

This arrangement is probably different from that of any former historical retrospect. Every chapter of the following volumes completes its particular subject, and may be considered in some degree as independent of the rest. The order, consequently, in which they are read will not be very material, though of course I should rather prefer that in which they are at present disposed. A solicitude to avoid continual transitions, and to give free scope to the natural association of connected facts, has dictated this arrangement, to which I confess myself partial. And I have found its inconveniences so trifling in composition, that I cannot believe they will occasion much trouble to the reader.

The first chapter comprizes the history of France from the invasion of Clovis to the expedition, *exclusively*, of Charles VIII. against Naples. It is not possible to fix accurate limits to the Middle Ages; but though the ten centuries from the fifth to the fifteenth seem, in a general point of view, to constitute that period, a less arbitrary division was necessary to render the commencement and conclusion of an historical narrative satisfactory. The continuous chain of transactions on the stage of

human society is ill divided by mere lines of chronological demarcation. But as the subversion of the western empire is manifestly the natural termination of ancient history, so the establishment of the Franks in Gaul appears the most convenient epoch for the commencement of a new period. Less difficulty occurred in finding the other limit. The invasion of Naples by Charles VIII. was the event that first engaged the principal states of Europe in relations of alliance or hostility, which may be deduced to the present day, and is the point at which every man who traces backwards its political history will be obliged to pause. It furnishes a determinate epoch in the annals of Italy and France, and nearly coincides with events which naturally terminate the history of the middle ages in other countries.

The feudal system is treated in the second chapter, which I have subjoined to the history of France, with which it has a near connexion. Inquiries into the antiquities of that jurisprudence occupied more attention in the last age than at present, and their dryness may prove repulsive to many readers. But there is no royal road to the knowledge of law; nor can any man render an obscure and intricate disquisition either perspicuous or entertaining. That the feudal system is an important branch of historical knowledge will not be disputed, when we consider not only its influence upon our own constitution, but that one of the par-



ties which at present divide a neighbouring kingdom professes to appeal to the original principles of its monarchy, as they subsisted before the subversion of that polity.

The four succeeding chapters contain a sketch, more or less rapid and general, of the histories of Italy, of Spain, of Germany, and of the Greek and Saracenic empires. In the seventh I have endeavoured to develop the progress of ecclesiastical power, a subject eminently distinguishing the Middle Ages, and of which a concise and impartial delineation has long been desirable.

The English constitution furnishes materials for the eighth chapter. I cannot hope to have done sufficient justice to this theme, which has cost me considerable labour; but it is worthy of remark, that since the treatise of Nathaniel Bacon, itself open to much exception, there has been no historical development of our constitution, founded upon extensive researches, or calculated to give a just notion of its character. For those parts of Henry's history which profess to trace the progress of government are still more jejune than the rest of his volumes; and the work of Professor Millar, of Glasgow, however pleasing from its liberal spirit, displays a fault too common among the philosophers of his country, that of theorizing upon an imperfect induction, and very often upon a total misapprehension of particular facts.

The ninth and last chapter relates to the general state of society in Europe during the middle ages, and comprehends the history of commerce, of manners, and of literature. None however of these are treated in detail, and the whole chapter is chiefly designed as supplemental to the rest, in order to vary the relations under which events may be viewed, and to give a more adequate sense of the spirit and character of the middle ages.

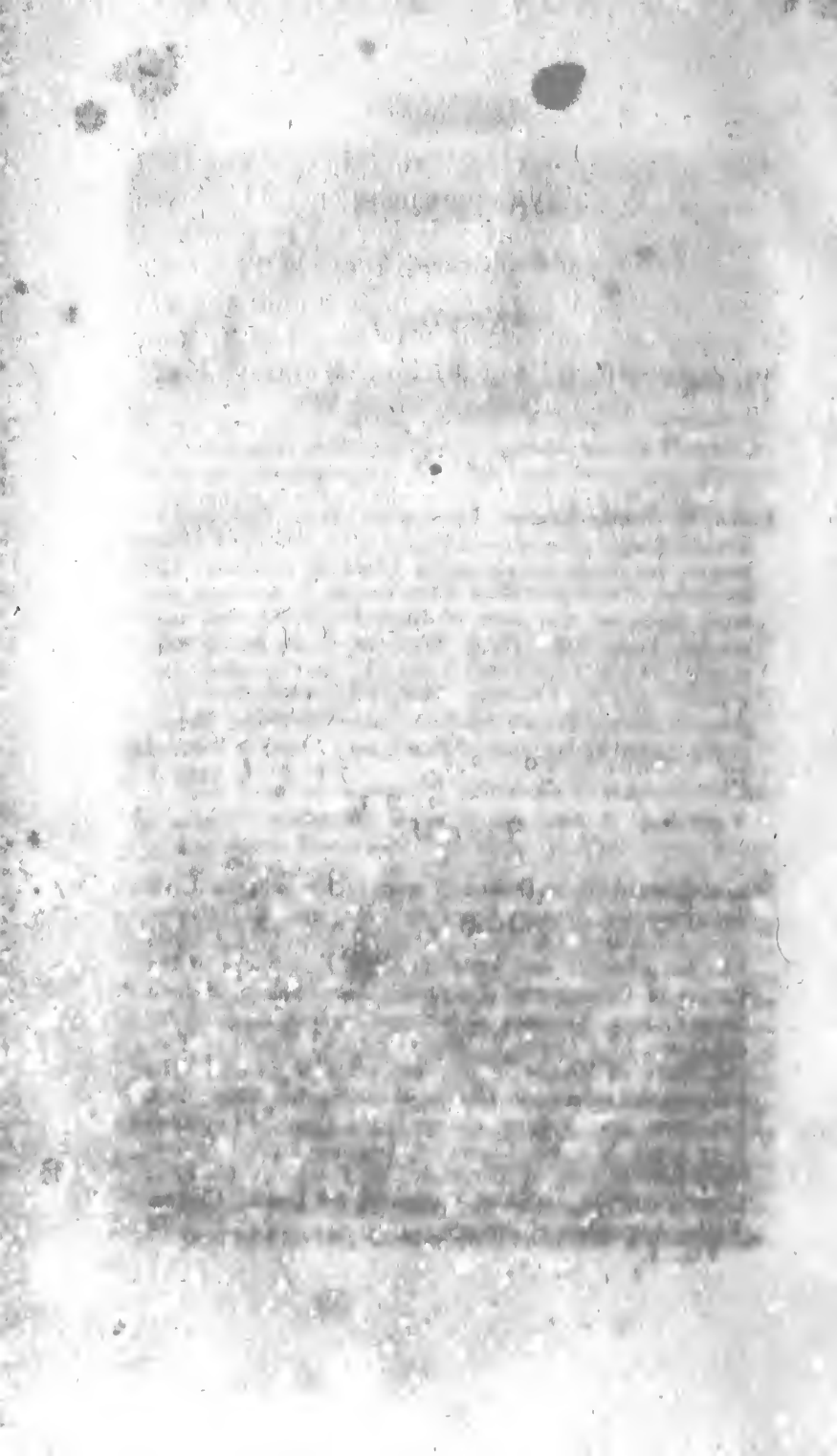
In the execution of a plan, far more comprehensive than what with a due consideration either of my abilities or opportunities I ought to have undertaken, it would be strangely presumptuous to hope that I can have rendered myself invulnerable to criticism. Even if flagrant errors should not be frequently detected, yet I am aware that a desire of conciseness has prevented the sense of some passages from appearing sufficiently distinct; and though I cannot hold myself generally responsible for omissions, in a work which could only be brought within a reasonable compass by the severe retrenchment of superfluous matter, it is highly probable that defective information, forgetfulness, or too great a regard for brevity have caused me to pass over many things which would have materially illustrated the various subjects of these inquiries.

I dare not, therefore, appeal with confidence to the tribunal of those superior judges, who, having bestowed a more undivided attention

on the particular objects that have interested them, may justly deem such general sketches imperfect and superficial; but my labours will not have proved fruitless, if they shall conduce to stimulate the reflection, to guide the researches, to correct the prejudices, or to animate the liberal and virtuous sentiments of inquisitive youth:

*Mi satis ampla*

*Merces, et mihi grande decus, sim ignotus in ævum  
Tum licet, externo penitusque inglorius orbi.*



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V I E W  
OF THE  
HISTORY AND GOVERNMENTS  
OF  
EUROPE  
DURING THE MIDDLE AGES.

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CHAPTER I.

THE HISTORY OF FRANCE, FROM ITS CONQUEST BY CLOVIS  
TO THE INVASION OF NAPLES BY CHARLES VIII.

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PART I.

*Fall of the Roman Empire—Invasion of Clovis—First race of French Kings—Accession of Pepin—State of Italy—Charlemagne—His Reign and Character—Louis the Debonair—His Successors—Calamitous state of the Empire in the ninth and tenth centuries—Accession of Hugh Capet—His first Successors—Louis VII.—Philip Augustus—Conquest of Normandy—War in Languedoc—Louis IX.—His Character—Digression upon the Crusades—Philip III.—Philip IV.—Aggrandizement of French Monarchy under his Reign—Reigns of his Children—Question of Salic Law—Claim of Edward III.*

BEFORE the conclusion of the fifth century, the mighty fabric of empire, which valour and policy had founded upon the seven hills of Rome, was finally overthrown, in all the west of Europe, by the barba-

rous nations from the north, whose martial energy and whose numbers were irresistible. A race of men, formerly unknown or despised, had not only shaken to pieces that proud sovereignty, but permanently settled themselves in its fairest provinces, and planted their yoke upon the ancient possessors. The Vandals were masters of Africa; the Suevi held part of Spain; the Visigoths possessed the remainder, with a large portion of Gaul; the Burgundians occupied the provinces watered by the Rhone and Saone; the Ostrogoths almost all Italy. The north-west of Gaul, between the Seine and the Loire, some writers have filled with an Armorican republic;\* while the remainder was still nominally subject to the Roman empire, and governed by a certain Syagrius, rather with an independent than a deputed authority.

At this time, Clovis, king of the Salian Franks, a tribe of Germans long connected with Rome, and originally settled upon the right bank of the Rhine, but who had latterly penetrated as far as Tournay and Cambray,† invaded Gaul

\* It is impossible not to speak sceptically as to this republic, or rather confederation of independent cities under the rule of their respective bishops, which Du Bos has with great ingenuity raised upon very slight historical evidence, and in defiance of the silence of Gregory, whose see of Tours bordered upon their supposed territory. But his hypothesis is not to be absolutely rejected, because it is by no means deficient in internal probability, and the early part of Gregory's history is brief and negligent. Du Bos, *Hist. Critique de l'Établissement des Français dans les Gaules*, t. i. p. 253. Gibbon, c. 38. after following Du Bos in his text, whispers, as usual, his suspicions in a note.

† The system of Père Daniel, who denies any permanent

and defeated Syagrius at Soissons. The result of this victory was the subjugation of those provinces which had previously been considered as Roman. But as their allegiance had not been very strict, so their loss was not very severely felt; since the emperors of Constantinople were not too proud to confer upon Clovis the titles of consul and patrician, which he was too prudent to refuse.\*

Some years after this, Clovis defeated the Alemanni, or Swabians, in a great battle at Zulpich,

settlement of the Franks on the left bank of the Rhine before Clovis, seems incapable of being supported. It is difficult to resist the presumption that arises from the discovery of the tomb and skeleton of Childeric, father of Clovis, at Tournay, in 1653. See Montfaucon, *Monumens de la Monarchie Française*, tome i. p. 10.

\* The theory of Du Bos, who considers Clovis as a sort of lieutenant of the emperors, and as governing the Roman part of his subjects by no other title, has justly seemed extravagant to later critical inquirers into the history of France. But it may nevertheless be true, that the connexion between him and the empire, and the emblems of Roman magistracy which he bore, reconciled the conquered to their new masters. This is judiciously stated by the Duke de Nivernois. *Mem. de l'Acad. des Inscript.* tome xx. p. 174. In the sixth century, however, the Greeks appear to have been nearly ignorant of Clovis's countrymen. Nothing can be made out of a passage in Procopius, where he seems to mention the Armoricans under the name *Ἀρβόρυχοι*; and Agathias gives a strangely romantic account of the Franks, whom he extols for their conformity to Roman laws, *πολιτεία ὡς τὰ πολλὰ χρεῖνται Ῥωμαϊκῇ, καὶ νόμοις τοῖς αὐτοῖς. κ. τ. λ.* He goes on to commend their mutual union, and observes particularly, that in partitions of the kingdom, which had frequently been made, they had never taken up arms against each other, nor polluted the land with civil bloodshed. One would almost believe him ironical.

near Cologne. In consequence of a vow, as it is said, made during this engagement,\* and at the instigation of his wife Clotilda, a princess of Burgundy, he became a convert to Christianity. It would be a fruitless inquiry, whether he was sincere in this change; but it is certain, at least, that no policy could have been more successful. The Arian sect, which had been early introduced among the barbarous nations, was predominant, though apparently without intolerance,† in the Burgundian and Visigoth courts; but the clergy of Gaul were strenuously attached to the Catholic side, and even before his conversion had favored the arms of Clovis. They now became his most zealous supporters; and were

\* Gregory of Tours makes a very rhetorical story of this famous vow, which, though we cannot disprove, it may be permitted to suspect.—L. ii. c. 30.

† Hist. de Languedoc, par Vich et Vaissette, tome i. p. 238. Gibbon, c. 37. A specious objection might be drawn from the history of the Gothic monarchies in Italy, as well as Gaul and Spain, to the great principles of religious toleration. These Arian sovereigns treated their Catholic subjects, it may be said, with tenderness, leaving them in possession of every civil privilege, and were rewarded for it by their defection or sedition. But in answer to this, it may be observed: 1. That the system of persecution, adopted by the Vandals in Africa, succeeded no better; the Catholics of that province having risen against them upon the landing of Belisarius: 2. That we do not know what insults and discouragements the Catholics of Gaul and Italy may have endured, especially from the Arian bishops, in that age of bigotry; although the administration of Alaric and Theodoric were liberal and tolerant: 3. That the distinction of Arian and Catholic was intimately connected with that of Goth and Roman, of conqueror and conquered; so that it is difficult to separate the effects of national, from those of sectarian, animosity.

rewarded by him with artful gratitude, and by his descendants with lavish munificence. Upon the pretence of religion, he attacked Alaric, king of the Visigoths, and by one great victory near Poitiers, overthrowing their empire in Gaul, reduced them to the maritime province of Septimania, a narrow strip of coast between the Rhone and the Pyrenees. The last exploits of Clovis were the reduction of certain independent chiefs of his own tribe and family, who were settled in the neighbourhood of the Rhine \* All these he put to death by force or treachery, for he was cast in the true mould of conquerors, and may justly be ranked among the first of his class, both for the splendour and the criminality of his ambition.†

Clovis left four sons ; one illegitimate, born before his conversion; and three by his queen Clotilda. These four made, it is said, an equal partition of his dominions, which comprehended not only France, but the western and central parts of Germany ; besides Bavaria, and perhaps Swabia, which were governed by their own dependent, but hereditary chiefs. Thierry, the eldest, had what was call-

\* Modern historians, in enumerating these *reguli*, call one of them king of Mans. But it is difficult to understand how a chieftain, independent of Clovis, could have been settled in that part of France. In fact, Gregory of Tours, our only authority, does not say that this prince, Regnomeris, was king of Mans, but that he was put to death in that city : *apud Cenomannis civitatem jussu Chlodovechi interfectus est*.

† The reader will be gratified by an admirable memoir, by the Duke de Nivernois, on the policy of Clovis, in the twentieth volume of the Academy of Inscriptions.

ed Austrasia, the eastern or German division, and fixed his capital at Metz; Clodomir, at Orleans; Childebert, at Paris; and Clotaire, at Soissons.\* During their reigns, the monarchy was aggrandized by the conquest of Burgundy. Clotaire, the youngest brother, ultimately re-united all the kingdoms; but upon his death, they were again divided among his four sons, and brought together a second time, by another Clotaire, the grandson of the first. It is a weary and unprofitable task to follow these changes in detail, through scenes of tumult and bloodshed, in which the eye meets with no sunshine, nor can rest upon any interesting spot. It would be difficult, as Gibbon has justly observed, to find any where more vice or less virtue. The names of two queens are distinguished even in that age for the magnitude of their crimes; Fredegonde, the wife of Chilperic, of whose atrocities none have

\* Quatuor filii regnum accipiunt, et inter se æquâ lance dividunt.—Greg. Tur. l. iii. c. 1. It would rather perplex a geographer to make an equal division of Clovis's empire into portions, of which Paris, Orleans, Metz, and Soissons, should be the respective capitals. I apprehend, in fact, that Gregory's expression is not very precise. The kingdom of Soissons seems to have been the least of the four, and that of Austrasia the greatest. But the partitions made by these princes were exceedingly complex; insulated fragments of territory, and even undivided shares of cities, being allotted to the worst provided brothers, by way of compensation, out of the larger kingdoms. It would be very difficult to ascertain the limits of these minor monarchies. But the French empire was always considered as one, whatever might be the number of its inheritors; and from accidental circumstances it was so frequently reunited, as fully to keep up this notion.



doubted ; and Brunehaut, queen of Austrasia, who has met with advocates in modern times, less perhaps from any fair presumptions, of her innocence, than from compassion for the cruel death which she underwent.\*

But after Dagobert, son of Clotaire II., the  
 kings of France dwindled into personal insigni- 628  
 ficance, and are familiarly spoken of by later  
 historians, as *insensati*, or idiots.† The 638  
 whole power of the kingdom devolved upon  
 the mayors of the palace, originally officers of the  
 household, through whom petitions or representations  
 were laid before the king. The weakness of the sove-

\* Every history will give a sufficient epitome of the Merovingian dynasty. The facts of these are of little other importance, than as they impress on the mind a thorough notion of the extreme wickedness of almost every person concerned in them, and consequently of the state to which society was reduced. But there is no advantage in crowding the memory with barbarian wars and assassinations. For the question about Brunehaut's character, who has had partizans almost as enthusiastic as those of Mary of Scotland, the reader may consult Pasquier *Recherches de la France*, l. viii. or Velly, *Hist. de France*, tome i. on one side, and a dissertation by Gaillard, in the *Memoirs of the Academy of Inscriptions*, tome xxx. on the other. The last is unfavourable to Brunehaut, and perfectly satisfactory to my judgment.

† An ingenious attempt is made by the Abbé Vertot, *Mem. de l'Académie*, tome vi. to rescue these monarchs from this long established imputation. But the leading fact is irresistible, that all the royal authority was lost during their reigns. However, the best apology seems to be, that after the victories of Pepin Heristal, the Merovingian kings, were, in effect, conquered, and their inefficiency was a matter of necessary submission to a master.

reign rendered this office important, and still greater weakness suffered it to become elective ; men of energetic talents and ambition united it with military command ; and the history of France, for half a century, presents no names more conspicuous than those of Ebroin and Grimoald, mayors of Neustria and Austrasia—the western and eastern divisions of the French monarchy.\* These, however, met with violent ends but a more successful usurper of the royal authority was Pepin Heristal, first mayor, and afterwards  
680 duke of Austrasia ; who united with almost an avowed sovereignty over that division, a paramount command over the French, or Neustrian provinces, where nominal kings of the Merovingian family were still permitted to exist. This authority he transmitted to a more renowned hero, his son Charles Martel, who, after some less important exploits, was called upon to encounter a new and terrible enemy. The Saracens, having swept over Spain, had penetrated into the very heart of France.  
732 Charles Martel gained a complete victory over them between Tours and poitiers,† in which 300,000 Mohammedans are fabled to have fallen. The reward of this victory was the province of Sep-

\* The original kingdoms of Soissons, Paris, and Orleans, were consolidated into that denominated Neustria, to which Burgundy was generally appendant, though distinctly governed by a mayor of its own election. But Aquitaine, the exact bounds of which I do not know, was, from the time of Dagobert I. separated from the rest of the monarchy, under a ducal dynasty, sprung from Aribert, brother of that monarch.

† Tours is above seventy miles distant from Poitiers; but I

timania, which the Saracens had conquered from the Visigoths.†

Such powerful subjects were not likely to remain long contented without the crown; but the circumstances under which it was transferred from the race of Clovis, are connected with one of the most important revolutions in the history of Europe. 752 The mayor Pepin, inheriting his father Charles Martel's talents and ambition, made, in the name and with the consent of the nation, a solemn reference to the pope Zacharias, as to the disposition of Childeric III. under whose nominal authority he himself was reigning. The decision was favourable,—that he

do not find that any French antiquary has been able to ascertain the place of this great battle with more precision, which is remarkable, since, after so immense a slaughter, we should expect the testimony of '*grandia effossis ossa sepulcris.*'

The victory of Charles Martel has immortalized his name, and may justly be reckoned among those few battles, of which a contrary event would have essentially varied the drama of the world in all its subsequent scenes; with Marathon, Arbela, the Metaurus, Chalons, and Leipsic. Yet do we not judge a little too much by the event, and follow as usual, in the wake of fortune? Has not more frequent experience condemned those who set the fate of empires upon a single cast, and risk a general battle with invaders, whose greater peril is in delay? Was not this the fatal error by which Roderic had lost his kingdom? Was it possible that the Saracens could have retained any permanent possession of France, except by means of a victory? And did not the contest upon the broad campaign of Poitou afford them a considerable prospect of success, which a more cautious policy would have withheld?

† This conquest was completed by Pepin in 759. The inhabitants preserved their liberties by treaty, and Vaissette deduces from this solemn assurance the privileges of Languedoc. *Hist. de Lang.* tome i. p. 412.

who possessed the power, should also bear the title of king. The unfortunate Merovingian was dismissed into a convent, and the Franks, with one consent, raised Pepin to the throne, the founder of a more illustrious dynasty. In order to judge of the importance of this revolution to the see of Rome, as well as to France, we must turn our eyes upon the affairs of Italy.

The dominion of the Ostrogoths was annihilated by the arms of Belisarius and Narses in the sixth century, and that nation appears no more in history. But not long afterwards, the Lombards, a people for some time settled in Pannonia, not only subdued that northern part of Italy which has retained their name, but, extending themselves southward, formed the powerful duchies of Spoleto and Benevento. The residence of their kings was in Pavia; but the hereditary vassals, who held those two duchies, might be deemed almost independent sovereigns.\* The rest of Italy was governed by exarchs, deputed by the Greek emperors, and fixed at Ravenna. In Rome itself, neither the people, nor the bishops, who had already conceived in part their schemes of ambition, were much inclined to brook the superiority of Constantinople; but their disaffection was counter-balanced by the inveterate hatred, as well as jealousy, with which they regarded the Lombards. But

\* The history, character, and policy of the Lombards, are well treated by Gibbon, c. 45. See, too, the fourth and fifth books of Giannone, and some papers by Gaillard in the *Memoirs of the Academy of Inscriptions*, tomes xxxii. xxxv. xlv.

an impolitic and intemperate persecution, carried on by two or three Greek emperors against a favourite superstition, the worship of images, excited commotions throughout Italy, of which the Lombards took advantage, and easily wrested the exarchate of Ravenna from the eastern empire. It was far from the design of the popes to see their nearest enemies so much aggrandized; and any effectual assistance from the emperor Constantine Copronymus would have kept Rome still faithful. But having no hope from his arms, and provoked by his obstinate intolerance, the pontiffs had recourse to France;\* and the service they had rendered to Pepin led to reciprocal obligations of the greatest magnitude. At the request of Stephen II. the new king of France descended from the Alps, drove the Lombards from their recent conquests, and conferred them upon the pope. This memorable donation nearly comprised the modern provinces of Romagna and the march of Ancona.†

The state of Italy, which had undergone no change for nearly two centuries, was now rapidly verging to a great revolution. Under the shadow of a mighty name, the Greek empire had concealed the extent of its decline. That charm was

\* There had been some previous overtures to Charles Martel, as well as to Pepin himself; the habitual sagacity of the court of Rome perceiving the growth of a new western monarchy, which would be, in faith and arms, their surest ally. Muratori, *Ann. d'Ital.* A. D. 741.

† Giannone, l. v. c. 2.

now broken ; and the Lombard kingdom, which had hitherto appeared the only competitor in the lists, proved to have lost its own energy in awaiting the occasion for its display. France was far more than a match for the power of Italy, even if she had not been guided by the towering ambition and restless activity of the son of Pepin. It was almost the first exploit of Charlemagne, after the death of his brother

772 Carloman had re-united the Frankish empire under his dominion,\* to subjugate the kingdom of Lombardy. Neither Pavia nor Verona, its most considerable cities, interposed any material de-  
774 lay to his arms ; and the chief resistance he encountered was from the dukes of Friuli and Benevento, the latter of whom could never be brought into much subjection to the conqueror. Italy, however, be the cause what it might, seems to have tempted Charlemagne far less than the dark forests of Germany. For neither the southern provinces, nor Sicily, could have withstood his power, if it had been steadily directed against them. Even Spain hardly drew so much of his attention, as the splendour of the prize might have excited. He gained however a very important accession to his empire, by

\* Carloman, younger brother of Charles, took the Austrasian, or German, provinces of the empire. The custom of partition was so fully established, that those wise and ambitious princes, Charles Martel, Pepin, and Charlemagne himself, did not venture to thwart the public opinion by introducing primogeniture. Carloman would not long have stood against his brother; who, after his death, usurped the inheritance of his two infant children.

conquering from the Saracens the territory contained between the Pyrenees and the Ebro. This was formed into the Spanish March, governed by the count of Barcelona, part of which at least must be considered as appertaining to France till the twelfth century.\*

But the most tedious and difficult achievement of Charlemagne, was the reduction of the Saxons. The wars with this nation, who occupied nearly the modern circles of Westphalia and Lower Saxony, lasted for thirty years. Whenever the conqueror withdrew his armies, or even his person, the Saxons broke into fresh rebellion; which his unparalleled rapidity of movement seldom failed to crush without delay. From such perseverance on either side, destruction of the weaker could alone result. A large colony of Saxons were finally transplanted into Flanders and Brabant, countries hitherto ill-peopled, in which their descendants preserved the same unconquerable spirit of resistance to oppression. Many fled to the kingdoms of Scandinavia, and mingling with the Northmen, who were just preparing to run their memorable

\* The counts of Barcelona always acknowledged the feudal superiority of the kings of France, till some time after their title had been merged in that of kings of Aragon. In 1180, legal instruments executed in Catalonia ceased to be dated by the year of the king of France; and as there certainly remained no other mark of dependence, the separation of the principality may be referred to that year. But the rights of the French crown over it were finally ceded by Louis IX. in 1258. *De Marca, Marca Hispanica*, p. 514. *Art de vérifier les Dates*, t. ii. p. 291.

career, revenged upon the children and subjects of Charlemagne the devastation of Saxony. The remnant embraced Christianity, their aversion to which had been the chief cause of their rebellions, and acknowledged the sovereignty of Charlemagne; a submission, which even Witikind, the second Arminius of Germany, after such irresistible conviction of her destiny, did not disdain to make. But they retained, in the main, their own laws; they were governed by a duke of their own nation, if not of their own election, and for many ages they were distinguished by their original character among the nations of Germany.

The successes of Charlemagne on the eastern frontier of his empire against the Sclavonians of Bohemia, and Huus or Avars of Pannonia, though obtained with less cost, were hardly less eminent. In all his wars, the newly conquered nations, or those whom fear had made dependent allies, were employed to subjugate their neighbours; and the incessant waste of fatigue and the sword was supplied by a fresh population that swelled the expanding circle of dominion. I do not know that the limits of the new western empire are very exactly defined by contemporary writers, nor would it be easy to appreciate the degree of subjection in which the Sclavonian tribes were held. As an organized mass of provinces, regularly governed by imperial officers, it seems to have been nearly bounded, in Germany, by the Elbe, the Saale, the Bohemian mountains, and a line drawn from thence crossing the Danube above Vienna, and pro-



longed to the gulf of Istria. Part of Dalmatia was comprized in the duchy of Friuli. In Italy, the empire extended not much beyond the modern frontier of Naples, if we exclude, as was the fact, the duchy of Benevento, from any thing more than a titular subjection. The Spanish boundary, as has been said already, was the Ebro.\*

A seal was put to the glory of Charlemagne, when Leo III., in the name of the Roman people, 800 placed upon his head the imperial crown. His father, Pepin, had borne the title of patrician, and he had himself exercised, with that title, a regular sovereignty over Rome.† Money was coined

\* I follow in this the map of Koch, in his *Tableau des Révolutions de l'Europe*, tom. i. That of Vaugondy, Paris, 1752, includes the dependent Sclavonic tribes, and carries the limit of the empire to the Oder and frontiers of Poland. The authors of *L'Art de vérifier les Dates* extend it to the Raab. It would require a long examination to give a precise statement.

† The Patricians of the lower empire were governors sent from Constantinople to the provinces. Rome had long been accustomed to their name and power. The subjection of the Romans, both clergy and laity, to Charlemagne, as well before as after he bore the imperial name; seems to be established. See *Dissertation Historique*, par le Blanc, subjoined to his *Traité des Monnoyes de France*, p. 18, and St. Marc, *Abrégé Chronologique de l'Histoire de l'Italie*, t. i. The first of these writers does not allow that Pepin exercised any authority at Rome. A good deal of obscurity rests over its internal government for near fifty years; but there is some reason to believe that the nominal sovereignty of the Greek emperors was not entirely abrogated. Muratori, *Annali d'Italia*, ad ann. 772. St. Marc, t. i. p. 356. 372. A mosaic, still extant in the Lateran palace, represents our Saviour giving the keys to St. Peter with one hand, and with the other, a standard to a

in his name, and an oath of fidelity was taken by the clergy and people. But the appellation of Emperor seemed to place his authority over all his subjects on a new footing. It was full of high and indefinite pretension, tending to overshadow the free election of the Franks by a fictitious descent from Augustus. A fresh oath of fidelity to him as emperor was demanded from his subjects. His own discretion, however, prevented him from affecting those more despotic prerogatives, which the imperial name might still be supposed to convey.

In analyzing the characters of heroes, it is hardly possible to separate altogether the share of fortune from their own. The epoch made by Charlemagne in the history of the world, the illustrious families which prided themselves in him as their progenitor, the very legends of romance, which are full of his fabulous exploits, have cast a lustre around his head, and testify the greatness that has embodied itself in his name. None indeed of Charlemagne's wars can be compared with the Saracenic victory of Charles Martel; but *that* was a contest for freedom, *his* for conquest; and fame is more partial to successful aggression than to patriotic resistance. As a scholar,

crowned prince, bearing the inscription, Constantine V. But Constantine V. did not begin to reign till 780; and if this piece of workmanship was made under Leo III., as the authors of *L'Art de vérifier les Dates* imagine, it could not be earlier than 795. T. i. p. 262. Muratori, ad ann. 798. However this may be, there can be no question that a considerable share of jurisdiction and authority was practically exercised by the popes during this period. Vid. Murat. ad ann. 789.

his acquisitions were probably little superior to those of his unrespected son ; and in several points of view the glory of Charlemagne might be extenuated by an analytical dissection.\* But rejecting a mode of judging, equally uncandid and fallacious, we shall find that he possessed in every thing that grandeur of conception, which distinguishes extraordinary minds. Like Alexander, he seemed born for universal innovation : in a life restlessly active, we see him reforming the coinage, and establishing the legal divisions of money ; gathering about him the learned of every country ; founding schools and collecting libraries ; interfering, but with the tone of a king, in religious controversies ; aiming, though prematurely, at the formation of a naval force ; attempting, for the sake of commerce, the magnificent enterprize of uniting the Rhine and Danube,† and meditating to mould the discordant codes of Roman and barbarian laws into an uniform system.

The great qualities of Charlemagne were indeed alloyed by the vices of a barbarian and a conqueror. Nine wives, whom he divorced with very little cere-

\* Eginhard attests his ready eloquence, his perfect mastery of Latin, his knowledge of Greek, so far as to read it, his acquisitions in logic, grammar, rhetoric and astronomy. But the anonymous author of the life of Louis the Debonair attributes most of these accomplishments to that unfortunate prince.

† See an essay upon this project in the Memoirs of the Academy of Inscriptions, tome xviii. The rivers which were designed to form the links of this junction, were the Altmuhl, the Regnitz, and the Main ; but their want of depth, and the spunginess of the soil, appear to present insuperable impediments to its completion.

mony, attest the license of his private life, which his temperance and frugality can hardly be said to redeem.\* Unsparing of blood, though not constitutionally cruel, and wholly indifferent to the means which his ambition prescribed, he beheaded in one day 4,000 Saxons; an act of atrocious butchery, after which his persecuting edicts, pronouncing the pain of death against those who refused baptism, or even who ate flesh during Lent, seem scarcely worthy of notice. This union of barbarous ferocity with elevated views of national improvement, might suggest the parallel of Peter the Great. But the degrading habits, and brute violence of the Moscovite place him at an immense distance from the restorer of the empire.

A strong sympathy for intellectual excellence was the leading characteristic of Charlemagne, and this undoubtedly biassed him in the chief political error of his conduct, that of encouraging the power and pretensions of the hierarchy. But, perhaps, his greatest eulogy is written in the disgraces of succeeding times, and the miseries of Europe. He stands alone like a beacon upon a waste, or a rock in the broad ocean. His sceptre was as the bow of Ulysses, which could not be drawn by any weaker hand. In the dark ages of European history, the reign of

\* I apprehend that there is no foundation for the charge of an incestuous passion for his daughters, which Voltaire calls *une foiblesse*. The error seems to have originated in a misinterpreted passage of Eginhard. These ladies, indeed, were far from being models of virtue, and their lives brought scandal upon the royal palace.

Charlemagne affords a solitary resting-place between two long periods of turbulence and ignominy, deriving the advantages of contrast both from those of the preceding dynasty, and of a posterity for whom he had formed an empire which they were unworthy and unequal to maintain.\*

Pepin, the eldest son of Charlemagne, died before him, leaving a natural son, named Bernard.† Even if he had been legitimate, the right of representation was not at all established during these 814 ages; indeed the general prejudice seems to have inclined against it. Bernard, therefore, kept only the kingdom of Italy, which had been transferred to his father; while Louis, the younger son of Charlemagne, inherited the Empire. But, in a short 817 time, Bernard, having attempted rebellion against his uncle, was sentenced to lose his eyes, which occasioned his death; a cruelty more agreeable to the prevailing tone of manners, than to the character of Louis, who bitterly reproached himself for the severity he had been persuaded to use.

Under this prince, called by the Italians the Pious, and by the French, Débonair or Good-natured,‡ the

\* The Life of Charlemagne, by Gaillard, without being made perhaps so interesting as it ought to have been, presents an adequate view of both his actions and character. Schmidt, *Hist. des Allemands*, tome ii. appears to me a superior writer.

† A contemporary writer, Thegan, ap. Muratori, A. D. 1810, asserts that Bernard was born of a concubine. I do not know why modern historians represent it otherwise.

‡ These names, as a French writer observes, meant the same thing *Pius* had, even in good Latin, the sense of *mitis*, meek, forbearing, or what the French call *debonair*. *Synonymes de*

mighty structure of his father's power began rapidly to decay. I do not know that Louis deserves so much contempt as he has undergone ; but historians have in general more indulgence for splendid crimes, than for the weaknesses of virtue. There was no defect in Louis's understanding or courage ; he was accomplished in martial exercises, and in all the learning which an education excellent for that age could supply. Nobody was ever more anxious to reform the abuses of administration ; and whoever compares his capitularies with those of Charlemagne, will perceive, that, as a legislator, he was even superior to his father. The fault lay entirely in his heart ; and this fault was nothing but a temper too soft, and a conscience too strict.\* It is not wonderful that the empire should have been speedily dissolved ; a succession of such men as Charles Martel, Pepin and Charlemagne could alone have preserved its integrity ; but the misfortunes of Louis, and his people were immediately owing to the following errors of his conduct.

Soon after his accession, Louis thought fit to associate his eldest son Lothaire to the empire, and to

Roubaud, tom. i. p. 257. Our English word *debonair* is hardly used in the same sense, if indeed it can be called an English word ; but I have not altered Louis's appellation, by which he is so well known.

\* Schmidt, *Hist. des Allemands*, tom. ii. has done more justice than other historians to Louis's character. Vaissette attests the goodness of his government in Aquitaine, which he held as a subordinate kingdom during his father's life. It extended from the Loire to the Ebro, so that the trust was not contemptible.—*Hist. de Languedoc*, tom. i. p. 476.

confer the provinces of Bavaria and Aquitaine, 817  
as subordinate kingdoms, upon the two younger, Louis and Pepin. This step was, in appearance, conformable to his father's policy, who had acted towards himself in a similar manner. But such measures are not subject to general rules, and exact a careful regard to characters and circumstances. The principle, however, which regulated this division, was learned from Charlemagne,\* and could alone, if strictly pursued, have given unity and permanence to the empire. The elder brother was to preserve his superiority over the others, so that they should neither make peace nor war, nor even give answer to ambassadors without his consent. Upon the death of either, no further partition was to be made; but such one of his children as might become the popular choice, was to inherit the whole kingdom, under the same superiority of the head of the family.† This compact was, from the beginning, disliked by the younger brothers; and an event, upon which Louis does not seem to have calculated, soon disgusted his colleague Lothaire. Judith of Bavaria, the emperor's second wife, an ambitious woman, bore him a son, Charles, whom both parents were naturally anxious to place on an equal footing with his brothers. But this could only be done at

\* Charlemagne had made a prospective arrangement in 806, the conditions of which are nearly the same as those of Louis; but the death of his two elder sons, Charles and Pepin, prevented its taking effect. Baluz. Capitularia, p. 441.

† Baluzii Capitularia, tom. i. p. 575.

the expense of Lothaire, who was ill-disposed to see his empire still further dismembered for this child of a second bed. Louis passed his life in a struggle with three undutiful sons, who abused his paternal kindness by constant rebellions.

These were rendered more formidable by the concurrence of a different class of enemies whom it had been another error of the emperor to provoke. Charlemagne had assumed a thorough control and supremacy over the clergy; and his son was perhaps still more vigilant in chastising their irregularities, and reforming their rules of discipline. But to this which they had been compelled to bear at the hands of the first, it was not equally easy for the second to obtain their submission. Louis therefore drew on himself the inveterate enmity of men, who united with the turbulence of martial nobles, a skill in managing those engines of offence which were peculiar to their order, and to which the implicit devotion of his character laid him very open. Yet after many vicissitudes of fortune, and many days of ignomy, his wishes were eventually accomplished. Charles  
 840 his youngest son, surnamed the Bald, obtained upon his death most part of France, while Ger-  
 847 many fell to the share of Louis, and the rest of the imperial dominions with the title to the eldest, Lothaire. This partition was the result of a sanguinary, though short contest; and it gave a fatal blow to the empire of the Franks. For, the treaty of Mersen, in 847, abrogated the sovereignty that had been attached to the eldest brother, and to



the imperial name, in former partitions ; each held his respective kingdom as an independent right.\*

The subsequent partitions made among the children of these brothers are of too rapid succession to be here related. In about forty years, the empire was nearly re-united under Charles the Fat, son of Louis of Germany ; but his short and inglorious reign ended in his deposition. From this time the possession of Italy was contested among her native princes ; Germany fell at first to an illegitimate descendant of Charlemagne, and in a short time was entirely lost by his family ; two kingdoms, afterwards united, were formed by usurpers, out of what was then called Burgundy, and comprised the provinces between the Rhone and Alps, with Franche Comté, and great part of Swisserland.† In France, the Carlovingian kings continued for another century ; but their line was interrupted two or three times by the election, or usurpation of a powerful family, the counts of Paris and Orleans, who ended, like the old mayors of the palace, in dispersing the

\* Baluzii Capitularia, tom. ii. p. 42. Velly, tom. ii. p. 75. The expressions of this treaty are perhaps equivocal ; but the subsequent conduct of the brothers and their family justifies the construction of Velly, which I have followed.

† These kingdoms were denominated Provence and Transjurane Burgundy. The latter was very small, comprizing only part of Swisserland ; but its second sovereign, Rodolph II. acquired by treaty almost the whole of the former ; and the two united were called the kingdom of Arles. This lasted from 933 to 1032, when Rodolph III. bequeathed his dominions to the Emperor Conrad II.—*Art de vérifier les Dates*, tom. ii. p. 427—432.

phantoms of royalty they had professed to serve.\* Hugh Capet, the representative of this house, upon the death of Louis V. placed himself upon the throne; thus founding the third and most permanent race of French sovereigns. Before this happened, the descendants of Charlemagne had sunk into insignificance, and retained little more of France than the city of Laon. The rest of the kingdom had been seized by the powerful nobles, who, under the nominal fidelity of the feudal system, maintained its practical independence and rebellious spirit.

These were times of great misery to the people, and the worst, perhaps, that Europe has ever known. Even under Charlemagne, we have abundant proofs of the calamities which the people suffered. The light which shone around him, was that of a consuming fire. The free proprietors, who had once considered themselves as only called upon to resist foreign invasion, were harrassed with endless expeditions, and dragged away to the Baltic sea, or the

\* The family of Capet is generally admitted to possess the most ancient pedigree of any sovereign line in Europe. Its succession through males is unequivocally deduced from Robert the Brave, made governor of Anjou in 864, and father of Eudes, king of France, and of Robert, who was chosen by a party in 922, though, as Charles the Simple was still acknowledged in some provinces, it is uncertain whether he ought to be counted in the royal list. It is, moreover, highly probable that Robert the Brave was descended, equally through males, from St. Arnoul, who died in 640, and consequently nearly allied to the Carlovingian family, who derive their pedigree from the same head.—See *Preuves de la Généalogie de Hugues Capet*, in *l'Art de vérifier les Dates*, tom. i. p. 566.

banks of the Drave. Many of them, as we learn from the Capitularies, became ecclesiastics to avoid military conscription.\* But far worse must have been their state under the lax government of succeeding times, when the dukes and counts, no longer checked by the vigorous administration of Charlemagne, were at liberty to play the tyrants in their several territories, of which they now became almost the sovereigns. The poorer landholders accordingly were forced to bow their necks to the yoke; and either by compulsion, or through hope of being better protected, submitted their independent patrimonies to the feudal tenure.

But evils still more terrible than these political abuses, were the lot of those nations who had been subject to Charlemagne. *They* indeed may appear to us little better than ferocious barbarians; but they were exposed to the assaults of tribes, in comparison of whom they must be deemed humane and

\* Capitularia, A. D. 805. Whoever possessed three mansi of alodial property, was called upon for personal service, or at least to furnish a substitute. Nigellus, author of a poetical Life of Louis I. seems to implicate Charlemagne himself in some of the oppressions of his reign. It was the first care of the former to redress those who had been injured in his father's time.—Recueil des Historiens, tome vi. N. B. I quote by this title the great collection of French historians, charters, and other documents illustrative of the middle ages, more commonly known by the name of its first editor, the Benedictine Bouquet. But as several learned men of that order were successively concerned in this work, not one half of which has yet been published, it seemed better to follow its own title-page.

polished. Each frontier of the empire had to dread the attack of an enemy. The coasts of Italy were continually alarmed by the Saracens of Africa, who possessed themselves of Sicily and Sardinia, and became masters of the Mediterranean sea.\* Though the Greek dominions in the south of Italy were chiefly exposed to them, they twice insulted and ravaged the territory of Rome, nor was there any security even in the neighbourhood of the maritime Alps; where, early in the tenth century, they settled a piratical colony.†

Much more formidable were the foes by whom Germany was assailed. The Slavonians, a widely extended people, whose language is still spoken upon half the surface of Europe, had occupied the countries of Bohemia, Poland, and Pannonia,‡ on the eastern confines of the empire, and from the time of Charlemagne acknowledged its superiority. But at the end of the ninth century, a Tartarian tribe, the

\* These African Saracens belonged to the Aglabites, a dynasty that reigned at Tunis for the whole of the ninth century, after throwing off the yoke of the Abbassite Khalifs.—They were overthrown themselves in the next age by the Fatimites. Sicily was first invaded in 827; but the city of Syracuse was only reduced in 878.

† Muratori, *Annali d'Italia*, ad ann. 906, et alibi. These Saracens of Frassineto, supposed to be between Nice and Monaco, were extirpated by a count of Provence in 972.

‡ I am sensible of the awkward effect of introducing this name from a more ancient geography, but it saves a circumlocution still more awkward. Austria would convey an imperfect idea, and the Austrian dominions could not be named without a tremendous anachronism.

Hungarians, overspreading that country, which since has borne their name, and moving forward like a vast wave, brought a dreadful reverse upon Germany. Their numbers were great, their ferocity untamed. They fought with light cavalry and light armour, trusting to their showers of arrows, against which the swords and lances of the European armies could not prevail. The memory of Attila was renewed in the devastations of these savages, who, if they were not his compatriots resembled them both in their countenances and customs. All Italy, all Germany, and the south of France, felt this scourge ;\* till Henry the Fowler, and Otho the Great, drove them 934 back by successive victories within their own limits, where, in a short time, they learned peaceful arts, adopted the religion and followed the po- 954 licy of Christendom.

If any enemies could be more destructive than these Hungarians, they were the pirates of the north, known commonly by the name of Normans. The love of a predatory life seems to have attracted ad-

\* In 924, they overran Languedoc. Raymond Pons, count of Toulouse, cut their army to pieces; but they had previously committed such ravages, that the bishops of that province, writing soon afterwards to pope John X. assert that scarcely any eminent ecclesiastics, out of a great number, were left alive.—Hsit. de Languedoc, tome ii. p. 60. They penetrated into Guienne, as late as 951. Flodoardi Chronicon, in Recueil des Historiens, tome viii. In Italy, they inspired such terror, that a mass was composed expressly deprecating this calamity: Ab Ungarorum nos defendas jaculis! In 937, they ravaged the country as far as Benevento and Capua. Muratori, Ann. d'Italia.

venturers of different nations to the Scandinavian seas, from whence they infested, not only by maritime piracy, but continual invasions, the northern coasts both of France and Germany. The causes of their sudden appearance are inexplicable, or at least could only be sought in the ancient traditions of Scandinavia. For, undoubtedly, the coasts of France and England were as little protected from depredations under the Merovingian kings, and those of the Hephtharchy, as in subsequent times. Yet only one instance of an attack from this side is recorded, and that before the middle of the sixth century,\* till the age of Charlemagne. In 787, the Danes, as we call those northern plunderers began to infest England, which lay most immediately open to their incursions. Soon afterwards they ravaged the coasts of France. Charlemagne repulsed them by means of his fleets; yet they pillaged a few places during his reign. It is said that, perceiving one day, from a port in the Mediterranean, some Norman vessels which had penetrated into that sea, he shed tears, in anticipation of the miseries which awaited his empire.† In Louis's reign, their depredations upon the coasts were more incessant,‡ but they did not pierce into the

\* Greg. Turon. l. iii. c. 3.

† In the ninth century, the Norman pirates not only ravaged the Balearic isles, and hither coasts of the Mediterranean, but even Greece. De Marca, *Marca Hispanica*, p. 327.

‡ Nigellus, the poetical biographer of Louis, gives the following description of the Normans:

*Nort quoque Francisco dicuntur nomine manni,  
Veleces, agiles, armigerique nimis:*

inland country, till that of Charles the Bald. The wars between that prince and his family, which exhausted France of her noblest blood, the insubordination of the provincial governors, even the instigation of some of Charles's enemies, laid all open to their inroads. They adopted an uniform plan of warfare both in France and England; sailing up navigable rivers in their vessels of small burthen, and fortifying the islands which they occasionally found, they made these intrenchments at once an asylum for their women and children, a repository for their plunder, and place of retreat from superior force. After pillaging a town, they retired to these strong holds or to their ships; and it was not till 872 that they ventured to keep possession of Angers, which, however, they were compelled to evacuate. Sixteen years afterwards, they laid siege to Paris, and committed the most ruinous devastations on the neighboring country. As these Normans were unchecked by religious awe, the rich monasteries, which had stood harmless amidst the havoc of Christian war, were overwhelmed in the storm. Perhaps they may have endured some irrecoverable losses of ancient learning; but their complaints are of monuments disfigured, bones of saints and kings dispersed, treasures carried away. St. Denis redeemed its abbot from captivity with six hundred and eighty-five pounds of gold.

*Ipsè quidem populus latè pernotus habetur,*

*Lintre dapes quærit, incolitatque mare.*

*Pulcher adest facie, vultuque statuque decorus.—l. iv.*

He goes on to tell us, that they worshipped Neptune—Was it a similarity of name, or of attributes, that deceived him?

All the chief abbies were stripped about the same time, either by the enemy, or for contributions to the public necessity. So impoverished was the kingdom, that in 860 Charles the Bald had great difficulty in collecting three thousand pounds of silver, to subsidize a body of Normans against their countrymen. The kings of France, too feeble to prevent or repel these invaders, had recourse to the palliative of buying peace at their hands, or rather precarious armistices, to which reviving thirst of plunder soon put an end. At length, Charles the Simple, in 918, ceded a great province, which they had already partly rendered desolate, and which has derived from them the name of Normandy. Ignominious as this appears, it proved no impolitic step. Rollo the Norman chief, with all his subjects, became Christians and Frenchmen; and the kingdom was at once relieved from a terrible enemy, and strengthened by a race of hardy colonists.\*

The accession of Hugh Capet had not the immediate effect of restoring the royal authority over France. His own very extensive fief was now indeed united to the crown; but a few great vassals occupied the remainder of the kingdom. Six of these obtained, at a subsequent time, the exclusive appellation of peers of France; the count of Flan-

\* An exceedingly good sketch of these Norman incursions, and of the political situation of France during that period, may be found in two Memoirs by M. Bonamy, *Mem. de l'Acad. des Inscript.* tome xv. and xvii. These I have chiefly followed in the text.



ders, whose fief stretched from the Scheldt to the Somme; the count of Champagne; the duke of Normandy, to whom Britany did homage; the duke of Burgundy, on whom the count of Nivernois seems to have depended; the duke of Aquitaine, whose territory, though less than the ancient kingdom of that name, comprehended Poitou, Limousin, and most of Guienne, with the feudal superiority over the Angoumois, and some other central districts; and, lastly, the count of Toulouse, who possessed Languedoc, with the small countries of Quercy and Rouergue, and the superiority over Auvergne.\* Besides these six, the duke of Gascony, not long afterwards united with Aquitaine, the counts of Anjou, Ponthieu, and Vermandois, the viscount of Bourges, the lords of Bourbon and Coucy, with one or two other vassals, held immediately of the last Carlovingian kings.† This was the aristocracy, of which Hugh Capet usurped the direction; for the suffrage of no general assembly gave a sanction to his title. On the death of Louis V. he took advantage of the absence of Charles duke of Lorraine, who, as the de-

\* Auvergne changed its feudal superior twice. It had been subject to the duke of Aquitaine till about the middle of the tenth century. The counts of Toulouse then got possession of it; but early in the twelfth century, the counts of Auvergne again did homage to Guienne. It is very difficult to follow the history of these fiefs.

† The *immediacy* of vassals, in times so ancient, is open to much controversy. I have followed the authority of those industrious Benedictines, the editors of *l'Art de vérifier les Dates*.

ceased king's uncle, was nearest heir, and procured his own consecration at Rheims. At first he was by no means acknowledged in the kingdom; but his contest with Charles proving successful, the chief vassals ultimately gave at least a tacit consent to the usurpation, and permitted the royal name to descend undisputed upon his posterity.\*

But this was almost the sole attribute of sovereignty which the first kings of the third dynasty enjoyed. For a long period before and after the accession of that family, France has, properly speaking, no national history. The character or fortune of those who were called its kings, were little more important to the majority of the nation, than those of foreign princes. Undoubtedly, the degree of influence which they exercised with respect to the vassals of the crown, varied according to their power and their

\* The south of France not only took no part in Hugh's elevation, but long refused to pay him any obedience, or rather to acknowledge his title, for obedience was wholly out of the question. The style of charters ran, instead of the king's name, *Deo regnante, rege expectante*, or, *absente rege terreno*. He forced Guienne to submit about 990. But in Limousin they continued to acknowledge the sons of Charles of Lorraine till 1009. Vaissette, *Hist. de Lang.* t. ii. p. 120. 150. Before this, Toulouse had refused to recognize Eudes and Raoul, two kings of France who were not of the Carlovingian family, and even hesitated about Louis IV. and Lothaire, who had an hereditary right. *Idem*.

These proofs of Hugh Capet's usurpation seem not to be materially invalidated by a dissertation in the 50th volume of the Academy of Inscriptions, p. 553. It is not, of course, to be denied, that the northern parts of France acquiesced in his assumption of the royal title, if they did not give an express consent to it.

proximity. Over Guienne and Toulouse, the four first Capets had very little authority; nor do they seem to have ever received assistance from them either in civil or national wars.\* With provinces nearer to their own domains, such as Normandy and Flanders, they were frequently engaged in alliance or hostility; but each seemed rather to proceed from the policy of independent states, than from the relation of a sovereign towards his subjects.

It should be remembered, that when the fiefs of Paris and Orleans are said to have been reunited by Hugh Capet to the crown, little more is understood than the feudal superiority over the vassals of these provinces. As the kingdom of Charlemagne's posterity was split into a number of great fiefs, so each

\* I have not found any authority for supposing that the provinces south of the Loire contributed their assistance to the king in war, unless the following passage of Gulielmus Pictaviensis be considered as matter of fact, and not rather as a rhetorical flourish. He tells us, that a vast army was collected by Henry I. against the duke of Normandy: Burgundiam, Arverniam, atque Vasconiam properare videres horribiles ferro; immo vires tanti regni quantum in climata quatuor mundi patent cunctas. *Recueil des Historiens*, t. xi. p. 83. But we have the roll of the army which Louis VI. led against the Emperor Henry V. A. D. 1120, in a national war; and it was entirely composed of troops from Champagne, the Isle of France, the Orleannois, and other provinces north of the Loire. Velly, t. iii. p. 62. Yet this was a sort of convocation of the ban: Rex ut eum tota Francia sequatur, invitat. Even so late as the reign of Philip Augustus, in a list of the knights bannerets of France, though those of Britany, Flanders, Champagne, and Burgundy, besides the royal domains, are enumerated, no mention is made of the provinces beyond the Loire. Du Chesne, *Script. Rerum Gallicarum*, t. v. p. 262.

of these contained many barons, possessing exclusive immunities within their own territories; waging war at their pleasure, administering justice to their military tenants, and other subjects, and free from all controul beyond the conditions of the feudal compact.\* At the accession of Louis VI. in 1108, the cities of Paris, Orleans, and Bourges, with the immediately adjacent districts, formed the most considerable portion of the royal domain. A number of petty barons, with their fortified castles, intercepted the communication between these, and waged war against the king almost under the walls of his capital. It cost Louis a great deal of trouble to reduce the lords of Montlehery, and other places within a few miles of Paris. Under this prince, however, who had more activity than his predecessors, the royal authority considerably revived. From his reign we may date the systematic rivalry of the French and English monarchies. Hostilities had several times occurred between Philip I. and the two Williams; but the wars that began under Louis VI. lasted, with no long interruption, for three centuries and a half, and form indeed the most leading feature of French History during the middle ages.† Of all the royal vassals, the dukes of Normandy were the proudest and most powerful. Though they had

\* In a subsequent chapter, I shall illustrate, at much greater length, the circumstances of the French monarchy with respect to its feudal vassals. It would be inconvenient to anticipate at present a disquisition which is rather of a legal than narrative character.

† Velly, t. iii. p. 40.

submitted to do homage, they could not forget that they came in originally by force, and that in real strength, they were fully equal to their sovereign. Nor had the conquest of England any tendency to diminish their pretensions.\*

Louis VII. ascended the throne with better prospects than his father. He had married <sup>1137</sup> Eleanor, heiress of the great duchy of Guienne. But this union, which promised an immense accession of strength to the crown, was rendered unhappy by the levities of that princess. Repudiated by Louis, who felt rather as a husband than a king, Eleanor immediately married Henry II. of England; who already inheriting Normandy from his mother, and Anjou from his father, became possessed of more than one half of France and an overmatch for Louis, even if the great vassals of the crown had been always ready to maintain its supremacy. One might venture perhaps to conjecture that the sceptre of France would eventually have passed from the Capets to the Plantagenets, if the vexatious quarrel with Becket at one time, and the successive rebellions fomented by Louis at a later period, had not embarrassed the great talents and ambitious spirit of Henry.

But the scene quite changed when Philip Augus-

\* The Norman historians maintain, that their dukes did not owe any service to the king of France, but only simple homage, or, as it was called, *per paragium*. *Recueil des Historiens*, t. xi. pref. p. 161. They certainly acted upon this principle; and the manner in which they first came into the country is not very consistent with dependence.

tus, son of Louis VII. came upon the stage. No  
 1180 prince comparable to him in systematic ambi-  
 tion and military enterprize, had reigned in France  
 since Charlemagne. From his reign the French  
 monarchy dates the recovery of its lustre. He wrest-  
 ed from the count of Flanders the Vermandois, (that  
 part of Picardy which borders on the Isle of France  
 and Champagne,\*) and subsequently, the county of  
 Artois. But the most important conquests of Philip  
 were obtained against the kings of England. Even  
 Richard I., with all his prowess, lost ground in  
 struggling against an adversary, not less active, and  
 more politic than himself. But when John not only  
 1203 took possession of his brother's dominions, but  
 confirmed his usurpation by the murder, as was  
 very probably surmised, of the heir, Philip, artfully  
 taking advantage of the general indignation, sum-  
 moned him as his vassal to the court of his peers.  
 John demanded a safe-conduct. Willingly, said  
 Philip; let him come unmolested. And return? in-  
 quired the English envoy. If the judgment of his  
 peers permit him, replied the king. By all the saints  
 of France, he exclaimed, when further pressed, he  
 shall not return unless acquitted. The bishop of  
 Ely still remonstrated, that the duke of Normandy

\* The original counts of Vermandois were descended from  
 Bernard king of Italy, grandson of Charlemagne: but their  
 fief passed by the donation of Isabel, the last countess, to her  
 husband the earl of Flanders, after her death in 1183. The  
 principal towns of the Vermandois are St. Quentin and Pe-  
 ronne. *Art de vérifier les Dates*, t. ii. p. 700.

could not come without the king of England; nor would the barons of that country permit their sovereign to run the risk of death or imprisonment. What of that, my lord bishop? cried Philip. It is well known that my vassal the duke of Normandy acquired England by violence. But, if a subject obtains any accession of dignity, shall his paramount lord therefore lose his rights?\*

It may be doubted, whether in thus citing John before his court, the king of France did not stretch his feudal sovereignty beyond its acknowledged limits. Arthur was certainly no immediate vassal of the crown for Britany; and though he had done homage to Philip for Anjou and Maine, yet a subsequent treaty had abrogated his investiture, and confirmed his uncle in the possession of those provinces.† But the vigour of Philip, and the meanness of his adversary, cast a shade over all that might be novel or irregular in these proceedings. John, not appearing at his summons, was declared guilty of felony, and his fiefs confiscated. The execution of this sentence was not entrusted to a dilatory arm. Philip poured his troops into Normandy, and took town after town, while the king of England, infatuated by his own wickedness and cowardice, made hardly an attempt at defence. In two years Normandy, Maine, and Anjou were irrecoverably lost. Poitou and Guienne resisted longer; but the

\* Matt. Paris, p. 238. edit. 1684.

† The illegality of Philip's proceedings is well argued by Mably, *Observations sur l'Histoire de France*, l. iii. c. 6.

conquest of the first was completed by Louis VIII. successor of Philip, and the subjection of the second seemed drawing near, when the arms of 1223 Louis were diverted to different, but scarcely less advantageous objects.

The country of Languedoc, subject to the counts of Toulouse, had been unconnected, beyond any other part of France, with the kings of the house of Capet. Louis VII. having married his sister to the reigning count, and travelled himself through the country, began to exercise some degree of authority, chiefly in conforming the rights of ecclesiastical bodies, who were vain perhaps of this additional sanction to the privileges which they already possessed.\* But the remoteness of their situation, with a difference in language and legal usages, still kept the people of this province apart from those of the north of France.

About the middle of the twelfth century, certain

\* According to the Benedictine historians, Vich and Vaissette, there is no trace of any act of sovereignty exercised by the kings of France in Languedoc from 955, when Lothaire confirmed a charter of his predecessor Raoul, in favour of the bishop of Puy, till the reign of Louis VII. (*Hist. de Languedoc*, tome ii. p. 88.) They have published however an instrument of Louis VI. in favour of the same church, confirming those of former princes. (*Appendix*, p. 473.) Neither the count of Toulouse, nor any lord of the province, were present in a very numerous national assembly, at the coronation of Philip I. (*Id.* p. 200.) I do not recollect to have ever met with the name of the count of Toulouse as a subscribing witness to the charters of the first Capetian kings in the *Recueil des Historiens*, where many are published; though that of the duke of Guienne sometimes occurs.



religious opinions, which it is not easy, nor, for our present purpose, material to define, but, upon every supposition, exceedingly adverse to those of the church,\* began to spread over Languedoc. Those who imbibed them have borne the name of Albigeois, though they were in no degree peculiar to the district of Albi. In despite of much preaching and some persecution, these errors made a continual progress ; till Innocent III., in 1198, dispatched commissaries, the seed of the inquisition, with ample powers both to investigate and to chastise. Raymond VI., count of Toulouse, whether inclined towards the innovators, as was then the theme of reproach, or, as is more probable, disgusted with the insolent interference of the pope and his missionaries, provoked them to a sentence of excommunication. Though this was taken off, he was still suspected ; and upon the assassination of one of the inquisitors, in which Raymond had no concern, Innocent published a 1208 crusade both against the count and his subjects, calling upon the king of France, and the nobility of that kingdom, to take up the cross, with all the indulgences usually held out as allurements to religious warfare. Though Philip would not interfere, a prodigious number of knights undertook this enterprize, led partly by ecclesiastics, and partly by some of the first barons in France. It was prosecuted with very

† For the real tenets of the Languedocian sectaries, I refer to the last chapter of the present work, where the subject will be taken up again.

atrocious barbarity which superstition, the mother of crimes, could inspire. Languedoc, a country, for that age, flourishing and civilized, was laid waste by these desolators; her cities burned; her inhabitants swept away by fire and the sword. And this was to punish a fanaticism ten thousand times more innocent than their own, and errors, which, according to the worst imputations, left the laws of humanity and the peace of social life unimpaired.\*

The crusaders were commanded by Simon de Montfort, a man, like Cromwell, whose intrepidity, hypocrisy and ambition, marked him for the hero of a holy war. The energy of such a mind, at the head of an army of enthusiastic warriors, may well account for successes which then appeared miraculous. But Montfort was cut off before he could realize his ultimate object, an independent principality; and Raymond was able to bequeath the inheritance of his ancestors to his son. Rome, however, was not yet  
1222 appeased; upon some new pretence, she raised up a still more formidable enemy against the younger Raymond. Louis VIII. suffered himself to be diverted from the conquest of Guienne, to take the cross against the supposed patron of heresy. After a short

\* The Albigensian war commenced with the storming of Beziers, and a massacre, wherein 15,000 persons, or, according to some narrations, 60,000, were put to the sword. Not a living soul escaped, as witnesses assure us. It was here that a Cistercian monk, who led on the crusaders, answered the inquiry, how the Catholics were to be distinguished from heretics: *Kill them all! God will know his own.* Besides Vaissette, see Sismondi, *Littérature du Midi*, t. i. p. 201.

and successful war, Louis dying prematurely, left the crown of France to a son only twelve years old. But the count of Toulouse was still pursued, till, hopeless of safety in so unequal a struggle, he concluded a treaty upon very harsh terms. By this he ceded the greater part of Languedoc; and <sup>1229</sup> giving his daughter in marriage to Alfonso, brother of Louis IX., confirmed to them, and to the king in failure of their descendants, the reversion of the rest, in exclusion of any other children whom he might have. Thus fell the ancient house of Toulouse, through one of those strange combinations of fortune, which thwart the natural course of human prosperity, and disappoint the plans of wise policy, and beneficent government.\*

The rapid progress of royal power under Philip Augustus and his son, had scarcely given the <sup>1226</sup> great vassals time to reflect upon the change which it produced in their situation. The crown, against which some might singly have measured their forces, was now an equipoise to their united weight. And such an union was hard to be accomplished among men not always very sagacious in policy, and divided by separate interests and animosities. They were not, however insensible to the crisis of their feudal liberties; and the minority of Louis IX., guided

\* The best account of this crusade against the Albigeois is to be found in the third volume of Vaissette's History of Languedoc; the Benedictine spirit of mildness and veracity tolerably counterbalancing the prejudices of orthodoxy. Velly, Hist. de France, t. iii. has abridged this work.

only by his mother, the regent Blanche of Castile, seemed to offer a favourable opportunity for recovering their former situation. Some of the most considerable barons, the counts of Britany, Champagne, and la Marche, had, during the time of Louis VIII., shewn an unwillingness to push the count of Toulouse too far, if they did not even keep up with him a secret understanding. They now broke out into open rebellion; but the address of Blanche detached some from the league, and her firmness subdued the rest. For the first fifteen years of Louis's reign the struggle was frequently renewed; till repeated humiliations convinced the refractory, that the throne was no longer to be shaken. A prince so feeble as Henry III. was unable to afford them that aid from England, which, if his grandfather or son had then reigned, might probably have lengthened these civil wars.

But Louis IX. had methods of preserving his ascendancy very different from military prowess. That excellent prince was perhaps the most eminent pattern of unswerving probity, and Christian strictness of conscience, that ever held the sceptre in any country. There is a peculiar beauty in the reign of St. Louis, because it shews the inestimable benefit which a virtuous king may confer on his people, without possessing any distinguished genius. For nearly half a century that he governed France, there is not the smallest want of moderation or disinterestedness in his actions; and yet he raised the influence of the monarchy to a much higher point than the most ambitious of his predecessors. To the surprize of his

own and later times, he restored great part of his conquests to Henry III., whom he might naturally hope to have expelled from France. It would indeed have been a tedious work to conquer 1259 Guienne, which was full of strong places, and the subjugation of such a province might have alarmed the other vassals of his crown. But it is the privilege only of virtuous minds to perceive what wisdom resides in moderate counsels; no sagacity ever taught a selfish and ambitious sovereign to forego the sweetness of immediate power. An ordinary king, in the circumstances of the French monarchy, would have fomented, or, at least, have rejoiced in the dissensions which broke out among the principal vassals; Louis constantly employed himself to reconcile them. In this too his benevolence had all the effects of far-sighted policy. It had been the practice of his three predecessors to interpose their mediation in behalf of the less powerful classes; the clergy, the inferior nobility, and the inhabitants of chartered towns. Thus the supremacy of the crown became a familiar idea; but the perfect integrity of St. Louis wore away all distrust, and accustomed even the most jealous feudatories to look upon him as their judge and legislator. And as the royal authority was hitherto shewn only in its most amiable prerogatives, the dispensation of favour, and the redress of wrong, few were watchful enough to remark the transition of the French constitution from a feudal league to an absolute monarchy.

It was perhaps fortunate for the display of St.

Louis's virtues, that the throne had already been strengthened by the less innocent exertions of Philip Augustus and Louis VIII. A century earlier, his mild and scrupulous character, unsustained by great actual power, might not have inspired sufficient awe. But the crown was now grown formidable, and Louis was so eminent for his firmness and bravery, qualities, without which every other virtue would have been ineffectual, that no one thought it safe to run wantonly into rebellion, while his disinterested administration gave no one a pretext for it. Hence the latter part of his reign was altogether tranquil, and employed in watching over the public peace, and the security of travellers; administering justice personally, or by the best counsellors; and compiling that code of feudal customs, called the Establishments of St. Louis, which is the first monument of legislation, after the accession of the house of Capet. Not satisfied with the justice of his own conduct, Louis aimed at that act of virtue, which is rarely practised by private men, and had perhaps no example among kings,—restitution. Commissaries were appointed to inquire what possessions had been unjustly annexed to the royal domain during the two last reigns. These were restored to the proprietors, or where length of time had made it difficult to ascertain the claimant, their value was distributed among the poor.\*

\* Velly, tom. v. p. 150. This historian has very properly dwelt for almost a volume on St. Louis's internal administration; it is one of the most valuable parts of his work. Join-

It has been hinted already, that all this excellence of heart in Louis IX. was not attended with that strength of understanding, which is necessary, we must allow, to complete the usefulness of a sovereign. During his minority, Blanche of Castile, his mother, had filled the office of regent with great courage and firmness. But after he grew up to manhood, her influence seems to have passed the limit which gratitude and piety would have assigned to it; and, as her temper was not very meek or popular, exposed the king to some degree of contempt. He submitted even to be restrained from the society of his wife Margaret, daughter of Raymond count of Provence, a princess of great virtue and conjugal affection. Joinville relates a curious story, characteristic of Blanche's arbitrary conduct, and sufficiently derogatory to Louis.\*

But the principal weakness of this king, which almost effaced all the good consequences of his virtues, was superstition. It would be idle to sneer at those habits of abstemiousness and mortification, which were part of the religion of his age, and, at the worst, were only injurious to his own comfort. But he had other prejudices, which, though they may be forgiven, must never be defended. No one was ever more impressed than St. Louis, with a belief in the duty of exterminating all enemies to his own faith.

ville is a real witness, on whom, when we listen, it is impossible not to rely.—Collection des Mémoires relatifs à l'Histoire de France, tom. ii. p. 140—156.

\* Collection des Mémoires, tom. ii. p. 241.

With these, he thought, no layman ought to risk himself in the perilous ways of reasoning, but to make answer with his sword as stoutly as a strong arm and a fiery zeal could carry *that* argument.\* Though, fortunately for his fame, the persecution against the Albigeois, which had been the disgrace of his father's short reign, was at an end before he reached manhood, he suffered a hypocritical monk to establish a tribunal at Paris for the suppression of heresy, where many innocent persons suffered death.

But no events in Louis's life were more memorable than his two crusades, which lead us to look back on the nature and circumstances of that most singular phænomenon in European history. Though the crusades involved all the western nations of Europe, without belonging peculiarly to any one, yet as France was more distinguished than the rest in most of those enterprizes, I shall introduce the subject as a sort of digression from the main course of French history.

† *Aussy vous dis je, me dist le roy, que nul, si n'est grant elerc, et theologien parfait, ne doit disputer aux Juifs; mais doit l'omme lay, quant il oit mesdire de la foy chrétienne, defendre la chose, non pas seulement des paroles, mais à bonne espée tranchant, et en frapper les médisans et mescreans a travers le corps, tant qu'elle y pourra entrer.* Joinville, in *Collection des Mémoires*, tom. i. p. 23. This passage, which shews a tolerable degree of bigotry, did not require to be strained farther still by Mosheim, vol. iii. p. 273, (edit. 1803). I may observe by the way, that this writer, who sees nothing in Louis IX. except his intolerance, ought not to have charged him with issuing an edict in favour of the inquisition, in 1229, when he had not assumed the government.



Even before the violation of Palestine by the Saracen arms, it had been a prevailing custom among the Christians of Europe to visit those scenes rendered interesting by religion, partly through delight in the effects of local association, partly in obedience to the prejudices or commands of superstition. These pilgrimages became more frequent in latter times, in spite, perhaps in consequence, of the danger and hardships which attended them. For a while the Mohammedan possessors of Jerusalem permitted, or even encouraged a devotion which they found lucrative; but this was interrupted, whenever the ferocious insolence, with which they regarded all infidels, got the better of their rapacity. During the eleventh century, when from increasing superstition, and some particular fancies, the pilgrims were more numerous than ever, a change took place in the government of Palestine, which was over-run by the Turkish hordes from the north. These barbarians treated the visitors of Jerusalem with still greater contumely, mingling with their Mohammedan bigotry, a consciousness of strength and courage, and a scorn of the Christians, whom they knew only by the debased natives of Greece and Syria, or by these humble and defenceless palmers. When such insults became known throughout Europe, they excited a keen sensation of resentment among nations equally courageous and devout; which, though wanting as yet any definite means of satisfying itself, was ripe for whatever favourable conjuncture might arise.

Twenty years before the first crusade, Gregory VII. had projected the scheme of embodying Europe in arms against Asia ; a scheme worthy of his daring mind, and which, perhaps, was never forgotten by Urban II. who in every thing loved to imitate his great predecessor.\* This design of Gregory was founded upon the supplication of the Greek Emperor Michael, which was renewed by Alexius Comnenus to Urban, with increased importunity. The Turks had now taken Nice, and threatened, from the opposite shore, the very walls of Constantinople. Every one knows whose hand held a torch to that inflammable mass of enthusiasm that pervaded Europe ; the hermit of Picardy, who, roused by witnessed wrongs, and imagined visions, journeyed from land to land, the apostle of an holy war. The preaching of Peter was powerfully seconded by Urban. In the councils of Piacenza and of Clermont, the deliverance of Jerusalem, was eloquently recommended and exultingly undertaken. It 1095 is the will of God! was the tumultuous cry that broke from the heart and lips of the assembly at Clermont, and these words afford at once the most obvious and most certain explanation of the leading principle of the crusades. Later writers, incapable of sympa-

\* Gregory addressed, in 1074, a sort of encyclic letter to all who would defend the Christian faith, enforcing upon them the duty of taking up arms against the Saracens who had almost come up to the walls of Constantinople. No mention of Palestine is made in this letter Labbé, *Concilia*, t. x. p. 44. St. Marc, *Abrége Chron. de l'Hist. de l'Italie*, t. iii. p. 614.

thising with the blind fervour of zeal, or anxious to find a pretext for its effects somewhat more congenial to the spirit of our times, have sought political reasons for that which resulted only from predominant affections. No suggestion of these will, I believe, be found in contemporary historians. To rescue the Greek empire from its imminent peril, and thus to secure Christendom from enemies who professed towards it eternal hostility, might have been a legitimate and magnanimous ground of interference; but it operated scarcely, or not at all, upon those who took the cross. Indeed it argues strange ignorance of the eleventh century to ascribe such refinements of later times, even to the princes of that age. The Turks were no doubt repelled from the neighbourhood of Constantinople by the crusaders; but this was a collateral effect of their enterprize. Nor had they any disposition to serve the interest of the Greeks, whom they soon came to hate, and not entirely without provocation, with almost as much animosity as the Moslems themselves.

Every means were used to excite an epidemical frenzy, the remission of penance, the dispensation from those practices of self-denial which superstition imposed or suspended at pleasure, the absolution of all sins, and the assurance of eternal felicity. None doubted that such as perished in the war received immediately the reward of martyrdom.\* False mira-

\* *Nam qui pro Christi nomine decertantes, in acie fidelium et Christianâ militiâ dicuntur occumbere, non solum infamiæ,*

cles and fanatical prophecies, which were never so frequent, wrought up the enthusiasm to a still higher pitch. And these devotional feelings, which are usually thwarted and balanced by other passions, fell in with every motive that could influence the men of that time; with curiosity, restlessness, the love of licence, thirst for war, emulation, ambition. Of the princes who assumed the cross, some probably from the beginning speculated upon making independent establishments in the East. In later periods, the temporal benefits of undertaking a crusade undoubtedly blended themselves with less selfish considerations. Men resorted to Palestine, as in modern times they have done to the colonies, in order to redeem their fame, or repair their fortune. Thus Gui de Lusignan, after flying from France for murder, was ultimately raised to the throne of Jerusalem. To the more vulgar class were held out inducements, which, though absorbed in the overruling fanaticism of the first crusade, might be exceedingly efficacious, when it began rather to flag. During the time that a crusader bore the cross, he was free from suit for his debts, and the interest of them was entirely abolished; he was exempted, in some instances at least, from taxes, and placed under the protection of the church, so that he could not be impleaded in any civil court, except in criminal charges, or questions relating to land.\*

verum et peccaminum et delictorum omnimodam credimus abolitionem promereri. Will. Tyr. l. x. c. 20.

\* Otho of Frisingen, c. 35, has inserted a bull of Eugenius

None of the sovereigns of Europe took a part in the first crusade; but many of their chief vassals, great part of the inferior nobility, and a countless multitude of the common people. The priests left their parishes, and the monks their cells; and though the peasantry were then in general bound to the soil, we find no check given to their emigration for this cause. Numbers of women and children swelled the crowd; it appeared a sort of sacrilege to repel any one from a work which was considered as the manifest design of Providence. But if it were lawful to interpret the will of Providence by events, few undertakings have been more branded by its disapprobation than the crusades. So many crimes and so much misery have seldom been accumulated in so short a space, as in the three years of the first expedition. We should be warranted by contemporary writers in stating the loss of the Christians alone during this period at nearly a million: but, at the least computation, it must have exceeded half that number.\* To engage in the crusade, and to perish in it, were almost synonymous. Few of those myriads who were mustered in the plains of Nice returned to gladden

III. in 1146, containing some of these privileges. Others are granted by Philip Augustus in 1214. *Ordonnances des Rois de France*, tom. i. See also Du Cange, *voc. Crucis Privilegia*.

\* William of Tyre says, that at the review before Nice, there were found 600,000 *of both sexes*, exclusive of 100,000 cavalry armed in mail, l. ii. c. 23. But Fulk of Chartres reckons the same number, besides women, children, and priests. An immense slaughter had previously been made in Hungary of the rabble under Gualtier Sans-Avoir.

their friends in Europe, with the story of their triumph at Jerusalem. Besieging alternately and besieged in Antioch, they drained to the lees the cup of misery: three hundred thousand sat down before that place, next year there remained but a sixth part to pursue the enterprize. But their losses were least in the field of battle; the intrinsic superiority of European prowess was constantly displayed; the angel of Asia, to apply the bold language of our poet, high and unmatched, where her rival was not, became a fear; and the Christian lances bore all before them in their shock from Nice to Antioch, Edessa and Jerusalem. It was here, where their triumph  
 1099 was consummated, that it was stained with the most atrocious massacre; not limited to the hour of resistance, but renewed deliberately even after that famous penitential procession to the Holy Sepulchre, which might have calmed their ferocious dispositions, if through the misguided enthusiasm of the enterprize, it had not been rather calculated to excite them.\*

The conquests obtained at such a price by the first crusade were chiefly comprised in the maritime parts of Syria. Except the state of Edessa beyond the

\* The work of Mailly, entitled *L'Esprit des Croisades*, is deserving of considerable praise for its diligence and impartiality. It carries the history, however, no farther than the first expedition. Gibbon's two chapters on the Crusades, though not without inaccuracies, are a brilliant portion of his great work. The original writers are chiefly collected in two folio volumes, entitled *Gesta Dei per Francois*. Hanover. 1611.

Euphrates,\* which, in its best days, extended over great part of Mesopotamia, the Latin possessions never reached more than a few leagues from the sea. Within the barrier of Mount Libanus, their arms might be feared, but their power was never established; and the prophet was still invoked in the mosques of Aleppo and Damascus. The principality of Antioch to the north, the kingdom of Jerusalem, with its feudal dependencies of Tripoli and Tiberias to the south, were assigned, the one to Boemond, a brother of Robert Guiscard, count of Apulia, the other to Godfrey of Boulogne,† whose extraordinary merit had justly raised him to a degree of influence with the chief crusaders, that has been sometimes confounded with a legitimate authority.‡ In the

\* Edessa was a little Christian principality, surrounded by, and tributary to the Turks. The inhabitants invited Baldwin, on his progress in the first crusade, and he made no great scruple of supplanting the reigning prince, who indeed is represented as a tyrant and usurper. *Esprit des Croisades*, t. iv. p. 62. De Guignes, *Hist. des Huns*, tom. ii. p. 135—162.

† Godfrey never took the title of King of Jerusalem, not chusing, he said, to wear a crown of gold in that city, where his Saviour had been crowned with thorns. Baldwin, Godfrey's brother, who succeeded him within two years, entitles himself, *Rex Hierusalem, Latinorum primus*. *Will. Tyr.* l. ii. c. 12.

‡ The heroes of the crusade are just like those of romance. Godfrey is not only the wisest, but the strongest man in the army. Perhaps Tasso has lost some part of this *physical* superiority for the sake of contrasting him with the imaginary Rinaldo. He cleaves a Turk in twain from the shoulder to the haunch. A noble Arab, after the taking of Jerusalem, requests him to try his sword upon a camel, when Godfrey with ease cuts off the head. The Arab, suspecting there might

course of a few years, Tyre, Ascalon, and the other cities upon the sea-coast, were subjected by the successors of Godfrey on the throne of Jerusalem. But as their enemies had been stunned, not killed by the western storm, the Latins were constantly molested by the Mohammedans of Egypt and Syria. They were exposed, as the out-post of Christendom, with no respite, and few resources. A second crusade, in 1147 which the emperor Conrad III. and Louis VII. of France were engaged, each with seventy thousand cavalry, made scarce any diversion; and that vast army wasted away in the passage of *Natolia*.\*

The decline of the Christian establishments in the East is ascribed by William of Tyre to the extreme viciousness of their manners, to the adoption of European arms by the orientals, and to the union of the Mohammedan principalities under a single chief.†

be something peculiar in the blade, desires him to do the same with *his* sword; and the hero obliges him by demolishing a second camel. Will. Tyr. l. ix. c. 22.

\* Vertot puts the destruction in the second crusade at two hundred thousand men. Hist. de Malthe, p. 129: and from William of Tyre's language, there seems no reason to consider this an exaggeration.

† L. xxi. c. 7. John of Vitry also mentions the change of weapons by the Saracens in imitation of the Latins, using the lance and coat of mail instead of bows and arrows. c. 92. But, according to a more ancient writer, part of Soliman's (the Kilidge Arslan of de Guignes) army in the first crusade was in armour, *loricis et galeis et clypeis aureis valde armati*. Albertus Aequensis, l. ii. c. 27. I may add to this a testimony of another kind, not less decisive. In the abbey of St. Denis, there were (*dum fuit Ilium*) ten pictures in stained glass, re-



Without denying the operation of these causes, and especially the last, it is easy to perceive one more radical than all the three, the inadequacy of their means of self-defence. The kingdom of Jerusalem was guarded only, exclusive of European volunteers, by the feudal service of eight hundred and sixty-six knights, attended each by four archers on horseback, by a militia of five thousand and seventy-five burghers, and by a conscription, in great exigencies, of the remaining population.\* William of Tyre mentions an army of one thousand three hundred horse and fifteen thousand foot, as the greatest which had ever been collected, and predicts the utmost success from it, if wisely conducted.† This was a little before the irruption of Saladin. In the last fatal battle, Lusignan seems to have had somewhat a larger force.‡

presenting sieges and battles in the first crusade. These were made by order of Suger, the minister of Louis VI. and consequently in the early part of the twelfth century. In many of them the Turks are painted in coats of mail, sometimes even in a plated cuirass. In others, they are quite unarmed, and in flowing robes. Montfaucon, *Monumens de la Monarchie Française*, t. i. pl. 50.

\* Gibbon, c. 98, note 25. Jerusalem itself was very thinly inhabited. For all the heathens, says William of Tyre, had perished in the massacre when the city was taken; or, if any escaped, they were not allowed to return; no heathen being thought fit to dwell in the holy city. Baldwin invited some Arabian Christians to settle in it.

† L. xxii. c. 27.

‡ *A primo introitu Latinorum in terram sanctam*, says John de Vitry, nostri tot milites in uno prælio congregare nequiverunt. Erant enim mille ducenti milites loricati; peditum autem cum armis, arcubus et balistis circiter viginti millia infaustæ expeditioni interfuisse dicuntur. *Gesta Dei per Francos*. p. 1118.

Nothing can more strikingly evince the ascendancy of Europe than the resistance of these Frankish acquisitions in Syria during nearly two hundred years. Several of their victories over the Moslems were obtained in spite of such disparity of numbers, that they may be compared with whatever is most illustrious in history or romance.\* These perhaps were less due to the descendants of the first crusaders, settled in the Holy Land,† than to those volunteers from Europe, whom martial ardour and religious zeal impelled to the service. It was the penance commonly imposed upon men of rank for the most heinous crimes, to serve a number of years under the banner of the cross. Thus a perpetual supply of warriors was poured in from Europe, and in this sense, the crusades may be said to have lasted without intermission during the whole period of the Latin settlements. Of these defenders, the most renowned were the military order of the Knights of the Temple and of the Hospital of St. John,‡ which were instituted, the one in 1124, the other in 1118, for the sole purpose of protecting the Holy Land. The

\* A brief summary of these victories is given by John of Vitry, c. 93.

† Many of these were of a mongrel extraction, descended from a Frank parent on one side, and a Syrian on the other. These were called Poulains, Pullani; and were looked upon as a mean degenerate race. Du Cange; Gloss. v. Pullanis and Observations sur Joinville, in *Collection des Mémoires; relatifs à l'Histoire de France*, t. ii. p. 190.

‡ The St. John of Jerusalem was neither the Evangelist, nor yet the Baptist, but a certain Cypriot, surnamed the Charitable, who had been patriarch of Alexandria.

Teutonic order, established in 1190, when the kingdom of Jerusalem was falling, soon diverted its schemes of holy warfare to a very different quarter of the world. Large estates, as well in Palestine, as throughout Europe, enriched the two former institutions; but the pride, rapaciousness, and misconduct of both, especially of the Templars, seem to have balanced the advantages derived from their valour.\* At length the famous Saladin, usurping the throne of a feeble dynasty which had reigned in Egypt, broke in upon the Christians of Jerusalem; the 1187 king and kingdom fell into his hands; nothing remained but a few strong towns upon the sea-coast.

These misfortunes roused once more the princes of Europe, and the third crusade was undertaken by her three greatest sovereigns, in personal estimation as well as dignity; by the emperor 1189 Frederic Barbarossa, Philip Augustus of France, and our own Richard Cœur de Lion. But this, like the preceding enterprize, failed of permanent effect; and those feats of romantic prowess, which made the name of Richard so famous both in Europe and Asia,† proved only the total inefficacy of all exer-

\* See a curious instance of the misconduct and insolence of the Templars, in William of Tyre, l. xx. c. 32. The Templars possessed nine thousand manors, and the knights of St. John nineteen thousand, in Europe. The latter were almost as much reproached as the Templars for their pride and avarice. L. xviii c. 6.

† When a Turk's horse started at a bush, he would chide him, Joinville says, with, *Cuides tu qu' y soit le roy Richard?* Women kept their children quiet with the threat of bringing Richard to them.

tions in an attempt so radically absurd. Palestine was never the scene of another crusade. One great armament was diverted to the siege of Constantinople; and another wasted in fruitless attempts upon Egypt. The emperor Frederick II. afterwards procured the restoration of Jerusalem by the Saracens; but the Christian princes of Syria were unable to defend it, and their possessions were gradually reduced to the maritime towns. Acre, the last of these, was finally taken by storm in 1291; and its ruin closes the history of the Latin dominion in Syria, which Europe had already ceased to protect.

The two last crusades were undertaken by St. Louis. In the first he was attended by 2,800 knights and 50,000 ordinary troops.\* He landed at Damietta, in Egypt, for that country was now deemed the key of the Holy Land, and easily made himself master of the city. But advancing up the country, he found natural impediments as well as enemies in his way; the Turks assailed him with Greek fire, an instrument of warfare almost as surprising and terrible as gunpowder; he lost his brother, the Count of Artois, with many knights, at Massoura, near Cairo; and began too late a retreat towards Damietta. Such calamities now fell upon

\* The Arabian writers give him 9,500 knights, and 130,000 common soldiers. But I greatly prefer the authority of Joinville, who has twice mentioned the number of knights in the text. On Gibbon's authority, I put the main body at 50,000; but, if Joinville has stated this, I have missed the passage. Their vessels amounted to 1800.

this devoted army, as have scarce ever been surpassed; hunger and want of every kind, aggravated by an unsparing pestilence. At length the king was made prisoner, and very few of the army escaped the Turkish scymetar in battle or in captivity. Four hundred thousand livres were paid as a ransom for Louis. He returned to France, and passed near twenty years in the exercise of those virtues which are his best title to canonization. But the fatal illusions of superstition were still always at his heart; nor did it fail to be painfully observed by his subjects, that he still kept the cross upon his garment. His last expedition was originally designed 1270 for Jerusalem. But he had received some intimation, that the king of Tunis was desirous of embracing Christianity. That these intentions might be carried into effect, he sailed out of his way to the coast of Africa, and laid siege to that city. A fever here put an end to his life, sacrificed to that ruling passion which never would have forsaken him. But he had survived the spirit of the crusades; the disastrous expedition to Egypt had cured his subjects, though not himself, of their folly;\* his son, after

\* The refusal of Joinville to accompany the king in this second crusade is very memorable, and gives us an insight into the bad effects of both expeditions. *Le Roy de France, et le Roy de Navarre me pressoient fort de me croiser, et entreprendre le chemin du pelerinage de la croix. Mais je leur respondi, que tandis que j'avoie esté oultremer au service de Dieu, que les gens et officiers du Roy de France avoient trop grevé et foullé mes subjets, tant qu'ils en estoient apovris; tellement que jamés il ne seroit, que eulx et moy ne nous en*

making terms with Tunis, returned to France; the Christians were suffered to lose what they still retained in the Holy Land; and though many princes, in subsequent ages, talked loudly of renewing the war, the promise, if it were ever sincere, was never accomplished.

Louis IX. had increased the royal domain by the annexation of several counties and other less important fiefs; but soon after the accession of Philip III. (surnamed the Bold) it received a far more considerable augmentation. Alfonso, the late king's brother, had been invested with the county of Poitou, ceded by Henry III. with part of Auvergne and of

1270 Saintonge; and held also, as has been said

before, the remains of the great fief of Toulouse, in right of his wife Jane, heiress of Raymond

1271 VII. Upon his death, and that of his coun-

tess, which happened about the same time, the king entered into possession of all these territories.

This acquisition brought the sovereigns of France

sortissons. Et veoie clerement, si je me mectoie au pelerinage de la croix, que ce seroit la totale destruction de mesdiz povres subjets. Depuis ouy-je dire a plusieurs, que ceux qui luy conseillerent l'entreprinse de la croix, firent un trez grant mal, et pecherent mortellement. Car tandis qu'il fust au royaume de France, tout son royaume vivoit en paix, et regnoit justice. Et incontinent qu'il en fust ors, tout commença à decliner, et à empirer.—T. ii. p. 158.

In the *Fabliaux* of Le Grand d'Aussy, we have a neat poem by Rutubœuf, a writer of St. Louis's age, in a dialogue between a crusader and a non-crusader, wherein, though he gives the last word to the former, it is plain that he designed the opposite scale to preponderate.—T. ii. p. 163.

into contact with new neighbours ; the kings of Aragon and the powers of Italy. The first great and lasting foreign war which they carried on, was that of Philip III. and IV. against the former kingdom, excited by the insurrection of Sicily. Though effecting no change in the boundaries of their dominions, this war may be deemed a sort of epoch in the history of France and Spain, as well as in that of Italy, to which it more peculiarly belongs. 1285

There still remained five great and ancient fiefs of the French crown ; Champagne, Guienne, Flanders, Burgundy, and Britany. But Philip IV., usually called the Fair, married the heiress of the first, a little before his father's death ; and although he governed that county in her name, without pretending to reunite it to the royal domain, it was at least, in a political sense, no longer a part of the feudal body. With some of his other vassals, Philip used more violent methods. A parallel might be drawn between this prince and Philip Augustus. But while in ambition, violence of temper, and unprincipled rapacity, as well as in the success of their attempts to establish an absolute authority, they may be considered as nearly equal, we may remark this difference, that Philip the Fair, who was destitute of military talents, gained those ends by dissimulation, which his predecessors had reached by force. 1285

The duchy of Guienne, though somewhat abridged of its original extent, was still by far the most

considerable of the French fiefs, even independently of its connexion with England.\* Philip, by dint of perfidy, and by the egregious incapacity of Edmund, brother of Edward I., contrived to obtain, and to keep for several years, the possession of this great province. A quarrel among some French and English sailors having provoked retaliation, 1202 till a sort of piratical war commenced between the two countries, Edward, as duke of Guienne, was summoned into the king's court, to answer for the trespasses of his subjects. Upon this, he dispatched his brother to settle terms of reconciliation, with fuller powers than should have been intrusted to so credulous a negociator. Philip so outwitted this prince, through a fictitious treaty, as to procure from him the surrender of all the fortresses in Guienne. He then threw off the mask, and after again summoning Edward to appear, pronounced the confiscation of his fief.† This business is the greatest blemish

\* Philip was highly offended that instruments made in Guienne should be dated by the year of Edward's reign, and not of his own. This almost sole badge of sovereignty had been preserved by the kings of France during all the feudal ages. A struggle took place about it, which is recorded in a curious letter from John de Greilli to Edward. The French court at last consented to let dates be thus expressed: *Actum fuit, regnante P rege Franciæ, E. rege Angliæ tenente ducatum Aquitanicæ*. Several precedents were shewn by the English, where the counts of Toulouse had used the form, *Regnante A. comite Tolosæ*. Rymer, t. ii. p. 1083.

† In the view I have taken of this transaction, I have been guided by several instruments in Rymer, which leave no doubt on my mind. Velly of course represents the matter more favourably for Philip.



in the political character of Edward. But his eagerness about the acquisition of Scotland rendered him less sensible to the danger of a possession in many respects more valuable; and the spirit of resistance among the English nobility, which his arbitrary measures had provoked, broke out very opportunely for Philip, to thwart every effort for the recovery of Guienne by arms. But after repeated suspensions of hostilities, a treaty was finally concluded, by which Philip restored the province, on the agreement for a marriage between his daughter Isabel and the heir of England. 1303

To this restitution he was chiefly induced by the ill success that had attended his arms in Flanders, another of the great fiefs which this ambitious monarch had endeavoured to confiscate. We have not perhaps, as clear evidence of the original injustice of his proceedings towards the count of Flanders, as in the case of Guienne; but he certainly twice detained his person, once after drawing him on some pretext to his court, and again, in violation of the faith pledged by his generals. The Flemings made, however, so vigorous a resistance that Philip was unable to reduce that small country; and in one famous battle at Courtray, they discomfited a powerful army with that utter loss and ignominy, to which the undisciplined impetuosity of the French nobles was pre-eminently exposed.\*

\* The Flemings took at Courtray 4,000 pair of gilt spurs, which were only worn by knights. These Velly, happily enough, compares to Hannibal's three bushels of gold rings at Cannæ.

Two other acquisitions of Philip the Fair deserve notice ; that of the counties of Angouleme and la Marche, upon a sentence of forfeiture (and, as it seems, a very harsh one) passed against the reigning count ; and that of the city of Lyons, and its adjacent territory, which had not even feudally been subject to the crown of France, for more than three hundred years. Lyons was the dowry of Matilda, daughter of Louis IV. on her marriage with Conrad, king of Burgundy, and was bequeathed with the rest of that kingdom by Rodolph, in 1032, to the empire. Frederic Barbarossa conferred upon the archbishop of Lyons all regalian rights over the city, with the title of Imperial Vicar. France seems to have had no concern with it, till St. Louis was called in as a mediator in disputes between the chapter and the city, during a vacancy of the see, and took the exercise of jurisdiction upon himself for the time. Philip III. having been chosen arbitrator in similar circumstances, insisted, before he would restore the jurisdiction, upon an oath of fealty from the new archbishop. This oath, which could be demanded, it seems, by no right but that of force, continued to be taken, till, in 1310, an archbishop resisting what he thought an usurpation, the city was besieged by Philip IV. and, the inhabitants being not unwilling to submit, was finally united to the French crown.\*

Philip the Fair left three sons, who successively

† Velly, t. vii. p. 404. For a more precise account of the political dependence of Lyons and its district, see *l'Art de Vérifier les Dates*, t. ii. p. 469.

reigned in France ; Louis, surnamed Hutin, Philip the Long, and Charles the Fair ; with a daughter, Isabel, married to Edward II. of England. Louis, the eldest, survived his father little more than a year, leaving one daughter, and his queen pregnant. The circumstances that ensued, require to be accurately stated. Louis had possessed, in right of his mother, the kingdom of Navarre, with the counties of Champagne and Brie. Upon his death, Philip, his next brother, assumed the regency both of France and Navarre ; and not long afterwards, entered into a treaty with Eudes duke of Burgundy, uncle of the princess Jane, Louis's daughter, by which her eventual rights to the succession were to be regulated. It was agreed that in case the queen should be delivered of a daughter, these two princesses, or the survivor of them, should take their grandmother's inheritance, Navarre and Champagne, on releasing all claim to the throne of France. But this was not to take place till their age of consent, when, if they should refuse to make such renunciation, their claim was to remain, and *right to be done to them therein* ; but, in return, the release made by Philip of Navarre and Champagne was to be null. In the mean time, he was *to hold the government* of France, Navarre, and Champagne, receiving homage of vassals in all these countries as *governor* ; saving the right of a male heir to the late king, in the event of whose birth, the treaty was not to take effect.\*

\* Hist. de Charles le Mauvais, par Sécousse, vol. ii. p. 2.

This convention was made on the 17th of July, 1316; and on the 15th of November, the queen brought into the world a son, John I. (as some call him) who died in four days. The conditional treaty was now become absolute; in spirit, at least, if any cavil might be raised about the expression; and Philip was, by his own agreement, precluded from taking any other title, than that of regent or governor, until the princess Jane should attain an age to concur in or disclaim the provisional contract of her uncle. Instead of this, however, he procured himself to be consecrated at Rheims; though on account of the avowed opposition of the duke of Burgundy, and even of his own brother Charles, it was thought prudent to shut the gates during the ceremony, and to dispose guards throughout the town. Upon his return to Paris, an assembly composed of prelates, and burgesses of that city, was convened, who acknowledged him as their lawful sovereign, and, if we may believe an historian, expressly declared, that a woman was incapable of succeeding to the crown of France.\* The duke of Burgundy, however, made a show of supporting his niece's interests, till tempted by the prospect of a marriage with the daughter of Philip, he shamefully be-

\* Tunc etiam declaratum fuit, quod in regno Franciæ mulier non succedit. Contin. Gul. Nangis, in Spicilegio d'Achery, t. iii. This monk, without talents, and probably without private information, is the sole contemporary historian of this important period. He describes the assembly which confirmed Philip's possession of the crown; quamplures proceres et regni nobiles ac magnates unà cum plerisque prælati et burgensibus Parisiensis civitatis.

trayed her cause, and gave up in her name, for an inconsiderable pension, not only her disputed claim to the whole monarchy, but her unquestionable right to Navarre and Champagne.\* I have been rather minute in stating these details, because the transaction is misrepresented by every historian, not excepting those who have written since the publication of the documents which illustrate it.†

In this contest, every way memorable, but especially on account of that which sprung out of it, the exclusion of females from the throne of France was first publicly questioned. The French writers almost unanimously concur in asserting, that such an exclusion was built upon a fundamental maxim of their government. No written law, nor even, so far as I know, the direct testimony of any ancient writer, has been brought forward to confirm this position. For as to the text of the Salic law, which was frequently quoted, and has indeed given a name to this exclusion of females, it can only by a doubtful and refined analogy be considered as bearing any relation to the succession of the crown. It is certain, nevertheless, that, from the time of Clovis, no woman had ever reigned in France; and although not an instance of a sole heiress had occurred before, yet some of the Merovingian kings left daughters, who might, if not rendered incapable by their sex, have

\* Hist. de Charles le Mauvais, t. ii. p. 6.

† Velly, who gives several proofs of disingenuousness in this part of history, mutilates the treaty of the 17th of July, 1316, in order to conceal Philip the Long's breach of faith towards his niece.

shared with their brothers in partitions then commonly made.\* But on the other hand, these times were gone quite out of memory, and France had much in the analogy of her existing usages, to reconcile her to a female reign. The crown resembled a great fief; and the great fiefs were universally capable of descending to women. Even at the consecration of Philip himself, Maud, countess of Artois, held the crown over his head among the other peers.† And it was scarcely beyond the recollection of persons living, that Blanche had been legitimate regent of France during the minority of St. Louis.

For these reasons, and much more from the provisional treaty concluded between Philip and the duke of Burgundy, it may be fairly inferred, that the Salic law, as it was called, was not so fixed a principle at that time, as has been contended. But how-

\* The treaty of Andely, in 587, will be found to afford a very strong presumption, that females were at that time excluded from reigning in France. Greg. Turon. l. ix.

† The continuator of Nangis says indeed of this; *de quo aliqui indignati fuerunt*. But these were probably the partisans of her nephew Robert, who had been excluded by a judicial sentence of Philip IV., on the ground that the right of representation did not take place in Artois; a decision considered by many as unjust. Robert subsequently renewed his appeal to the court of Philip of Valois; but, unhappily for himself, yielded to the temptation of forging documents in support of a claim which seems to have been at least plausible without such aid. This unwise dishonesty, which is not without parallel in more private causes, not only ruined his pretensions to the county of Artois, but produced a sentence of forfeiture, and even of capital punishment against himself. See a pretty good account of Robert's process in Velly, t. viii. p. 262.

ever this may be, it received at the accession of Philip the Long, a sanction which subsequent events more thoroughly confirmed. Philip himself leaving only three daughters, his brother Charles 1322 mounted the throne; and upon his death, the rule was so unquestionably established, that his only daughter was excluded by the count of Valois, 1328 grandson of Philip the Bold. This prince first took the regency, the queen dowager being pregnant, and upon her giving birth to a daughter, was crowned king. No competitor or opponent appeared in France; but one more formidable than any whom France could have produced, was awaiting the occasion to prosecute his imagined right, with all the resources of valour and genius, and to carry desolation over that great kingdom, with as little scruple as if he were preferring a suit before a civil tribunal.

From the moment of Charles IV.'s death, Edward III. of England buoyed himself up with a notion of his title to the crown of France, in right of his mother Isabel, sister to the three last kings. We can have no hesitation in condemning the injustice of this pretension. Whether the Salic law were or were not valid, no advantage could be gained by Edward. Even if we could forget the express or tacit decision of all France, there stood in his way Jane, the daughter of Louis X., three of Philip the Long, and one of Charles the Fair. Aware of this, Edward set up a distinction, that, although females were excluded from succession, the same rule did not apply to their male issue; and thus, though his mother

Isabel could not herself become queen of France, she might transmit a title to him. But this was contrary to the commonest rules of inheritance: and if it could have been regarded at all, Jane had a son, afterwards the famous king of Navarre, who stood one degree nearer to the crown than Edward.

It is asserted in some French authorities, that Edward preferred a claim to the regency, immediately after the decease of Charles the Fair, and that the States General, or at least the peers of France, adjudged that dignity to Philip de Valois. Whether this be true or not, it is clear that he entertained projects of recovering its right as early, though his youth and the embarrassed circumstances of his government, threw insuperable obstacles in the way of their execution.\* He did liege homage therefore to

\* Letters of Edward III. addressed to certain nobles and towns in the south of France, dated March 28, 1328, four days before the birth of Charles IV.'s posthumous daughter, intimate this resolution. Rymer, vol. iv. p. 344 et seq. But an instrument, dated at Northampton, on the 16th of May, is decisive: This is a procuration to the bishops of Worcester and Litchfield, to demand, and take possession of the kingdom of France, "in our name, which kingdom has devolved, and appertains to us, as to the right heir. p. 354. To this mission Archbishop Stratford refers, in his vindication of himself from Edward's accusation of treason in 1340; and informs us, that the two bishops actually proceeded to France, though without mentioning any further particulars. *Novit enim qui nihil ignorat, quod cum quæstio de regno Franciæ post mortem regis Caroli, fratris serenissimæ matris vestræ, in parlamento tunc apud Northampton celebrato, tractata discussaque fuisset; quodque idem regnum Franciæ ad vos hæreditario jure extiterat legitimè devolutum; et super hoc fuit ordinatum, quod duo episcopi, Wigorniensis tunc, nunc autem Wintoniensis, ac*



Philip for Guienne, and for several years, while the affairs of Scotland engrossed his attention, gave no sign of meditating a more magnificent enterprize. As he advanced in manhood, and felt the consciousness of his strength, his early designs grew mature, and produced a series of the most important and interesting revolutions in the fortunes of France. These will form the subject of the ensuing pages.

Coventriensis et Lichfeldensis in Franciam dirigerent gressus suos, nomineque vestro regnum Franciæ vindicarent, et prædicti Philippi de Valesio coronationem pro viribus impedirent; qui juxta ordinationem prædictam legationem iis injunctam tunc assumentes, gressus suos versus Franciam direxerunt; quæ quidem legatio maximam guerræ præsentis materiam ministravit. Wilkins. Concilia, t. i. p. 664.

There is no evidence in Rymer's *Fœdera* to corroborate Edward's supposed claim to the regency of France upon the death of Charles IV.; and it is certainly suspicious, that no appointment of ambassadors or procurators for this purpose should appear in so complete a collection of documents. The French historians generally assert this, upon the authority of the continuator of William of Nangis, a nearly contemporary, but not always well informed, writer. It is curious to compare the four chief English historians. Rapin affirms both the claim to the regency, on Charles IV.'s death, and that to the kingdom, after the birth of his daughter. Carte, the most exact historian we have, mentions the latter, and is silent as to the former. Hume passes over both, and intimates, that Edward did not take any steps in support of his pretensions in 1328. Henry gives the supposed trial of Edward's claim to the regency before the States General at great length, and makes no allusion to the other, so indisputably authenticated in Rymer. It is, I think, most probable, that the two bishops never made the formal demand of the throne as they were directed by their instructions. Stratford's expressions seem to imply that they did not.

## PART II.

*War of Edward III. in France—Causes of his Success—Civil Disturbances of France—Peace of Bretigni—its Interpretation considered—Charles V.—Renewal of the War—Charles VI.—his Minority and Insanity—Civil Dissensions of the Parties of Orleans and Burgundy—Assassination of both these Princes—Intrigues of their Parties with England under Henry IV.—Henry V. invades France—Treaty of Troyes—State of France in the first years of Charles VII.—Progress and subsequent Decline of the English Arms—their Expulsion from France—change in the Political Constitution—Louis XI—his Character—Leagues formed against him—Charles duke of Burgundy—his Prosperity and Fall—Louis obtains possession of Burgundy—his death—Charles VIII.—Acquisition of Britany.*

NO war had broken out in Europe, since the fall of the Roman Empire, so memorable as that of Edward III. and his successors against France, whether we consider its duration, its object, or the magnitude and variety of its events. It was a struggle of one hundred and twenty years, broken only once by a regular pacification, where the most ancient and extensive dominion in the civilized world was the prize, twice lost and twice recovered in the conflict, while individual courage was wrought up to that high pitch, which it can seldom display, since the regularity of modern tactics has chastised its enthusiasm, and levelled its distinctions. There can be

no occasion to dwell upon the events of this war, which are familiar to almost every reader; it is rather my aim to develop and arrange those circumstances, which, when rightly understood, give the clue to its various changes of fortune.

France was, even in the fourteenth century, a kingdom of such extent and compactness of figure, such population and resources, and filled with so spirited a nobility, that the very idea of subjugating it by a foreign force must have seemed the most extravagant dream of ambition.\* Yet in the course of about twenty years of war, this mighty nation was reduced to the lowest state of exhaustion, and dismembered of considerable provinces by an ignominious peace. What was the combination of <sup>many</sup> ~~political~~ cal causes, which brought about so strange a revolution, and, though not realizing Edward's hopes to their extent, redeemed them from the imputation of rashness in the judgement of his own and succeeding ages?

The first advantage which Edward III., possessed

\* The pope (Benedict XII.) wrote a strong letter to Edward, (March 1340,) dissuading him from taking the title and arms of France, and pointing out the impossibility of his ever succeeding. I have no doubt but that this was the common opinion. But the Avignon popes were very subservient to France. Clement VI. as well as his predecessor, Benedict XII. threatened Edward with spiritual arms. Rymer, t. v. p. 88 and 465. It required Edward's spirit and steadiness to despise these menaces. But the time, when they were terrible to princes, was rather passed by; and the Holy See never ventured to provoke the king, who treated the church; throughout his reign, with admirable firmness and temper.

in this contest, was derived from the splendour of his personal character, and from the still more eminent virtues of his son. Besides prudence and military skill, these great princes were endowed with qualities peculiarly fitted for the times in which they lived. Chivalry was then in its zenith; and in all the virtues which adorned the knightly character, in courtesy, munificence, gallantry, in all delicate and magnanimous feelings, none were so conspicuous as Edward III. and the Black Prince. As later princes have boasted of being the best gentlemen, they might claim to be the prowtest knights in Europe; a character not quite dissimilar, yet of more high pretension. Their court was, as it were, the sun of that system, which embraced the valour and nobility of the Christian world; and the respect which was felt for their excellencies, while it drew many to their side, mitigated in all the rancour and ferociousness of hostility. This war was like a great tournament, where the combatants fought indeed *à outrance*, but with all the courtesy and fair play of such an entertainment, and almost as much for the honour of their ladies. In the school of the Edwards were formed men not inferior in any nobleness of disposition to their masters, Manni, and the Captal de Buch, Felton, Knollys and Calverley, Chandos and Lancaster. On the French side, especially after du Guesclin came on the stage, these had rivals almost equally deserving of renown. If we could forget, what never should be forgotten, the wretchedness and devastation that fell upon a great kingdom, too

dear a price for the display of any heroism, we might count these English wars in France among the brightest periods in history.

Philip of Valois, and John his son, shewed but poorly in comparison with their illustrious enemies. Yet they had both considerable virtues; they were brave,\* just, liberal, and the latter, in particular, of unshaken fidelity to his word. But neither was beloved by his subjects; the misgovernment and extortion of his predecessors during half a century had alienated the public mind, and rendered their own taxes and debasement of the coin intolerable. Philip was made by misfortune, John by nature, suspicious and austere; and although their most violent acts seem never to have wanted absolute justice, yet they were so ill conducted, and of so arbitrary a complexion, that they greatly impaired the reputation, as well as interests, of these monarchs. In the execution of Clisson under Philip, in that of the Connétable d'Eu under John, and still more in that of

\* The bravery of Philip is not questioned. But a French historian, in order, I suppose, to enhance this quality, has presumed to violate truth in an extraordinary manner. The challenge sent by Edward, offering to decide his claim to the kingdom by single combat, is well known. Certainly it conveys no imputation on the king of France to have declined this unfair proposal. But Velly has represented him as accepting it, on condition that Edward would stake the crown of England against that of France; an interpolation which may be truly called audacious, since not a word of this is in Philip's letter, preserved in Rymer, which the historian had before his eyes, and actually quotes upon the occasion. *Hist. de France*, t. viii. p. 382.

Harcourt, even in the imprisonment of the king of Navarre, though every one of these may have been guilty of treasons, there were circumstances enough to exasperate the disaffected, and to strengthen the party of so politic a competitor as Edward.

Next to the personal qualities of the king of England, his resources in this war must be taken into the account. It was after long hesitation that he assumed the title and arms of France, from which, unless upon the best terms, he could not recede without loss of honour.\* In the mean time he

\* The first instrument in which Edward disallows the title of Philip, is his convention with the emperor Lewis of Bavaria, wherein he calls him, *nunc pro rege Francorum se gerentem*. The date of this is August 26, 1337, yet on the 28th of the same month, another instrument gives him the title of king; and the same occurs in subsequent instances. At length we have an instrument of procuration to the duke of Brabant, October 7, 1337, empowering him to take possession of the crown of France in the name of Edward: *attendentes inclitum regnum Franciæ ad nos fore jure successionis legitimè devolutum*. Another of the same date appoints the said duke his vicar general and lieutenant of France. The king assumed in this commission the title, *Rex Franciæ et Anglæ*; in other instruments he calls himself, *Rex Angliæ et Franciæ*. It was necessary to obviate the jealousy of the English, who did not, in that age, admit the precedence of France. Accordingly, Edward had two great seals, on which the two kingdoms were named in a different order. But, in the royal arms, those of France were always in the first quarter, as they continued to be until the accession of the house of Brunswick.

Probably Edward III. would not have entered into the war, merely on account of his claim to the crown. He had disputes with Philip about Guienne; and that prince had, rather unjustifiably, abetted Robert Bruce in Scotland. I am not inclined to lay any material stress upon the instigation Robert of Artois.

strengthened himself by alliances with the emperor, with the cities of Flanders, and with most of the princes in the Netherlands and on the Rhine. Yet I do not know that he profited much by these conventions, since he met with no success, till the scene of the war was changed from the Flemish frontier to Normandy and Poitou. The troops of Hainault alone were constantly distinguished in his service.

But his intrinsic strength was at home. England had been growing in riches since the wise government of his grandfather, Edward I. and through the market opened for her wool with the manufacturing towns of Flanders. She was tranquil within; and her northern enemy, the Scotch, had been defeated and quelled. The parliament, after some slight precautions against a very probable effect of Edward's conquest of France, the reduction of their own island into a province, entered, as warmly as improvidently, into his quarrel. The people made it their own, and grew so intoxicated with the victories of this war, that for some centuries the injustice and folly of the enterprize do not seem to have struck the gravest of our countrymen.

There is, indeed, ample room for national exultation at the names of Crecy, Poitiers and Azincourt. So great was the disparity of numbers upon those famous days, that we cannot, with the French historians, attribute the discomfiture of their hosts merely to mistaken tactics and too impetuous valour. They yielded rather to that intrepid steadiness in danger, which had already become the characteristic

of our English soldiers, and which, during four centuries, has ensured their superiority, whenever ignorance or infatuation have not led them into the field. But these victories, and the qualities that secured them, must chiefly be ascribed to the freedom of our constitution, and to the superior condition of the people. Not the nobility of England, not the feudal tenants won the battles of Crecy and Poitiers; for these were fully matched in the ranks of France: but the yeomen, who drew the bow with strong and steady arms, accustomed to its use in their native fields, and rendered fearless by personal competence and civil freedom. It is well known, that each of the three great victories was due to our archers, who were chiefly of the middle class, and attached, according to the system of that age, to the knights and squires who fought in heavy armour with the lance. Even at Poitiers, of which our country seems to have the least right to boast, since the greater part of the Black Prince's small army was composed of Gascons, the merit of the English bowmen is strongly attested by Froissart.\*

Yet the glorious termination to which Edward was enabled, at least for a time, to bring the contest, was rather the work of fortune, than of valour and prudence. Until the battle of Poitiers, he had made no

\* Au vray dire, les archers d'Angleterre faisoient à leurs gens grant avantage. Car ils tiroient tant espesement, que les François ne scavoient de quel costé entendre, qu'ils ne fussent consuyvis de trayt; et s'avancoient tousjours ces Anglois, et petit à petit enqueroyent terre. Part I. c. 163.



progress towards the conquest of France. That country was too vast, and his army too small, for such a revolution. The victory of Crecy gave him nothing but Calais : a post of considerable importance in war and peace, but rather adapted to annoy than to subjugate the kingdom. But at Poitiers he obtained the greatest of prizes, by taking prisoner the king of France. Not only the love of freedom tempted that prince to ransom himself by the utmost sacrifices, but his captivity left France defenceless, and seemed to annihilate the monarchy itself. The government was already odious ; a spirit was awakened in the people, which might seem hardly to belong to the fourteenth century ; and the convulsions of our own time are sometimes strongly paralleled by those which succeeded the battle of Poitiers. Already the States General had established a fundamental principle, that no resolution could be passed as the opinion of the whole, unless each of the three orders concurred in its adoption.\* The right of levying and of regulating the collection of taxes was recognized. But that assembly which met at Paris immediately after the battle, went far greater lengths in the reform and controul of government. From the time of Philip the Fair, the abuses natural to arbitrary power had harassed the people. There now seemed an opportunity of redress ; and however seditious, or even treasonable, may have been the motives of those who guided this assembly of the States,

\* *Ordonnances des Rois de France*, t. ii.

especially the famous Marcel, it is clear that many of their reformatiions tended to liberty and the public good.\* But the tumultuous scenes which passed in the capital, sometimes heightened into civil war, necessarily distracted men from the common defence against Edward. These tumults were excited, and the distraction increased, by Charles, king of Navarre, surnamed the Bad, to whom the French writers have, not perhaps unjustly, attributed a character of unmixed and inveterate malignity. He was grandson of Louis Hutin, by his daughter Jane, and, if Edward's pretence of claiming through females could be admitted, was a nearer heir to the crown; the consciousness of which seems to have suggested itself to his depraved mind as an excuse for his treacheries, though he could entertain very little prospect of asserting the claim against either contending party. John had bestowed his daughter in marriage on the king of Navarre; but he very soon gave a proof of his character, by procuring the assassination of the king's favourite, Charles de la Cerda. An irreconcilable enmity was the natural result of this crime. Charles became aware that he had offended beyond the possibility of forgiveness, and that no letters of pardon, nor pretended reconciliation, could secure him from the king's resentment. Thus, impelled by guilt into deeper guilt, he entered into al-

\* I must refer the reader onward to the next chapter, for more information on this subject. This separation is inconvenient, but it arose indispensably out of my arrangement, and prevented greater inconveniences.

liances with Edward, and fomented the seditious spirit of Paris. Eloquent and insinuating, he was the favourite of the people, whose grievances he affected to pity, and with whose leaders he intrigued. As his paternal inheritance, he possessed the county of Evreux in Normandy. The proximity of this to Paris created a formidable diversion in favour of Edward III. and connected the English garrisons of the North with those of Poitou and Guienne.

There is no affliction which did not fall upon France during this miserable period. A foreign enemy was in the heart of the kingdom, the king a prisoner, the capital in sedition, a treacherous prince of the blood in arms against the sovereign authority. Famine, the sure and terrible companion of war, for several years desolated the country. In 1348, a pestilence the most extensive and unsparing of which we have any memorial, visited France as well as the rest of Europe, and consummated the work of hunger and the sword.\* The companies of adventure,

\* A full account of the ravages made by this memorable plague may be found in Matteo Villani, the second of that family who wrote the history of Florence. His brother and predecessor, John Villani, was himself a victim to it. The disease began in the Levant about 1346; from whence Italian traders brought it to Sicily, Pisa, and Genoa. In 1348, it passed the Alps and spread over France and Spain; in the next year, it reached Britain, and in 1350 laid waste Germany and other northern states; lasting generally about five months in each country. At Florence, more than three out of five died. Muratori, *Script. Rerum Italicarum*, t. xiv. p. 12. The time of Boccaccio's *Decamerone*, as is well known, is laid during this pestilence.

mercenary troops in the service of John or Edward, finding no immediate occupation after the truce of 1357, scattered themselves over the country, in search of pillage. No force existed sufficiently powerful to check these robbers in their career. Undismayed by superstition, they compelled the pope to redeem himself in Avignon by the payment of forty thousand crowns.\* France was the passive victim of their licence, even after the pacification concluded with England, till some were diverted into Italy, and others led by du Guesclin to the war of Castile. Impatient of this wretchedness, and stung by the insolence and luxury of their lords, the peasantry of several districts broke out into a dreadful insurrection. This was called the *Jacquerie*, from the cant phrase 1348 *Jacques bon homme*, applied to men of that class; and was marked by all the circumstances of horror incident to the rising of an exasperated and unenlightened populace.†

\* Froissart, p. 187. This troop of banditti was commanded by Arnaud de Cervole, surnamed l'Archiprêtre, from a benefice which, although a layman, he possessed, according to the irregularity of those ages. See a memoir on the life of Arnaud de Cervole, in the twenty-fifth volume of the Academy of Inscriptions.

† The second continuator of Nangis, a monk of no great abilities, but entitled to notice as our most contemporary historian, charges the nobility with spending the money raised upon the people by oppressive taxes, in dice '*et alios indecentes jocos.*' D'Achery, *Spicilegium*, t. iii. p. 114. (folio edition.) All the miseries that followed the battle of Poitiers, he ascribes to bad government and neglect of the commonwealth; but especially to the pride and luxury of the nobles. I am aware that this writer is biassed in favour of the king of Navarre;

Subdued by those misfortunes, though Edward had made but slight progress towards the conquest of the country, the regent of France, afterwards Charles V., submitted to the peace of Bretigni. By this treaty, not to mention less important articles, all Guienne, Gascony, Poitou, Saintonge, the Limousin, and the Angoumois, as well as Calais, and the county

but he was an eye-witness of the people's misery, and perhaps a less exceptionable authority than Froissart, whose love of pageantry and habits of feasting in the castles of the great, seem to have produced some insensibility towards the sufferings of the lower classes. It is a painful circumstance, which Froissart and the continuator of Nangis attest, that the citizens of Calais, more interesting than the common heroes of history, were unrewarded, and begged their bread in misery throughout France. Villaret contradicts this, on the authority of an ordinance which he has seen in their favour. But that was not a time when ordinances were very sure of execution. Vill. t. ix. p. 470. I must add, that the celebrated story of the six citizens of Calais, which has of late been called in question, receives strong confirmation from John Villani, who died very soon afterwards. l. xii. c. 96. Froissart of course wrought up the circumstances after his manner. In all the colouring of his history, he is as great a master as Livy; and as little observant of particular truth. M. de Bréquigny, almost the latest of those excellent antiquaries whose memoirs so much illustrate the French Academy of Inscriptions, has discussed the history of Calais, and particularly this remarkable portion of it. *Mém. de l'Académie des Inscriptions*, t. 1.

Petrarch has drawn a lamentable picture of the state of France in 1360, when he paid a visit to Paris. I could not believe, he says, that this was the same kingdom which I had once seen so rich and flourishing. Nothing presented itself to my eyes but a fearful solitude, an extreme poverty, lands uncultivated, houses in ruins. Even the neighbourhood of Paris manifested every where marks of destruction and conflagration. The streets are deserted; the roads overgrown with weeds: the whole is a vast solitude. *Mém. de Pétrarque*, t. iii. p. 541.

of Ponthieu, were ceded in full sovereignty to  
1360 Edward ; a price abundantly compensating his  
renunciation of the title of France, which was the sole  
concession stipulated in return. Every care seems to  
have been taken to make the cession of these pro-  
vinces complete. The first six articles of the treaty  
expressly surrender them to the king of England.  
By the seventh, John and his son engage to convey  
within a year from the ensuing Michaelmas all their  
rights over them, and especially those of sovereignty  
and feudal appeal. The same words are repeated  
still more emphatically in the eleventh, and some  
other articles. The twelfth stipulates the exchange  
of mutual renunciations ; by John, of all right over  
the ceded countries ; by Edward, of his claim to the  
throne of France. At Calais, the treaty of Bretigni  
was renewed by John, who, as a prisoner, had been  
no party to the former compact, with the omission  
only of the twelfth article, respecting the exchange  
of renunciations. But that it was not intended to  
wave them by this omission, is abundantly manifest  
by instruments of both the kings, in which reference  
is made to their future interchange at Bruges, on the  
feast of St. Andrew, 1361. And, until that time  
should arrive, Edward promises to lay aside the title  
and arms of France, (an engagement which he  
strictly kept,\*) and John to act in no respect as king

\* Edward gives John the title of king of France, in an instrument bearing date at Calais, October 22, 1360. Rymer, t. vi. p. 217. The treaty was signed October 24. Id. p. 219.

or suzerain over the ceded provinces. Finally, on November 15, 1361, two commissioners are appointed by Edward to receive the renunciations of the king of France at Bruges on the ensuing feast of St. Andrew\* and to do whatever might be mutually required by virtue of the treaty. These, however, seem to have been withheld, and the twelfth article of the treaty of Bretigni was never expressly completed. By mutual instruments, executed at Calais, October 24, it had been declared, that the sovereignty of the ceded provinces, as well as Edward's right to the crown of France, should remain as before, although suspended as to its exercise, until the exchange of renunciations, notwithstanding any words of present conveyance or release in the treaties of Bretigni and Calais. And another pair of letters patent, dated October 26, contains the form of renunciations, which, it is mutually declared, should have effect by virtue of the present letters, in case one party should be ready to exchange such renunciations at the time and place appointed, and the other should make default therein. These instruments executed at Calais are so prolix, and so studiously enveloped, as it seems, in the obscurity of technical language, that it is difficult to extract their precise intention. It appears, nevertheless, that whichever party was prepared to perform what was required of him at Bruges on November 30, 1361, the other then and there making default, would acquire not only what our lawyers

\* Rym. t. vi. p. 339.

might call an equitable title, but an actually vested right, by virtue of the provision in the letters patent of October 26, 1360. The appointment above mentioned of Edward's commissioners on November 15, 1361, seems to throw upon the French the burthen of proving, that John sent his envoys with equally full powers to the place of meeting, and that the non-interchange of renunciations was owing to the English government. But, though an historian sixty years later, (Juvenal des Ursins,) asserts that the French commissioners attended at Bruges, and that those of Edward made default, it is certainly rendered improbable, by the actual appointment of commissioners made by the king of England on the 15th of November, by the silence of Charles V. after the recommencement of hostilities, who would have rejoiced in so good a ground of excuse, and by the language of some English instruments, complaining that the French renunciations were withheld.\*

\* It appears that among other alleged infractions of the treaty the king of France had received appeals from Armagnac, Albret, and other nobles of Aquitaine, not long after the peace. For, in February, 1362, a French envoy, the count de Tan-carville, being in England, the privy council presented to Edward their bill of remonstrances against this conduct of France; *et semble au conseil le roy d'Angleterre que considéré la fourme de la ditte paix, qui tant estoit honorable et profitable ou royaume de France et a toute chretienté, que la reception desdittes appellacions, n'a mie esté bien faite, ne passee si ordenément, ne á si bon affection et amour comme il doit avoir esté faite, de raison parmi l'effet et l'intention de la paix, et ailliances afferméés et entr'eux semble estre moult prejudicia-bles et contraires a l'onneur et a l'estat du roy et de son fils le prince et de toute la maison d'Angleterre et pourra estre evi-*



It is suggested by the French authors, that Edward was unwilling to execute a formal renunciation of his claim to the crown. But we can hardly suppose, that, in order to evade this condition, which he had voluntarily imposed upon himself by the treaties of Bretigni and Calais, he would have left his title to the provinces ceded by those conventions imperfect. He certainly deemed it indefeasible, and acted without any complaint from the French court, as the perfect master of those countries. He created his son Prince of Aquitaine, with the fullest powers over that new principality, holding it in fief of the crown of England by the yearly rent of an ounce of gold.\*

dente matiere de rebellion des subgiez, et aursi donner tres-grant occasion d'enfreindre la paix, si bon remede sur ce n'y soit mis plus hastivement. Upon the whole, they conclude that if the king of France would repair this trespass, and send his renunciation of sovereignty, the king should send his of the title of France. Martenne, *Thes. Anec.* t. i. p. 1487.

Four princes of the blood, or, as they are termed, Seigneurs des Fleurdelys, were detained as hostages for the due execution of the treaty of Bretigni, which, from whatever pretence, was delayed for a considerable time. Anxious to obtain their liberty, they signed a treaty at London in November 1362, by which, among other provisions, it was stipulated, that the king of France should send fresh letters under his seal, conveying and releasing the territories ceded by the peace, without the clause contained in the former letters, retaining the ressort: *et que en ycelles lettres soit expressement compris transport de la souveraineté et du ressort, &c* Et le roi d'Engleterre et ses enfans ferront semblablement autiels renonciations, sur ce q'il doit faire de sa partie. Rymer, t. vi. p. 396. This treaty of London was never ratified by the French government; but I use it as a proof, that Edward imputed the want of mutual renunciations to France, and was himself ready to perform his part of the treaty.

\* Rym. t. vi. p. 385—389. One clause is remarkable; Ed-

And the court of that great prince was kept for several years at Bordeaux.

I have gone something more than usual into detail as to these circumstances, because a very specious account is given by some French historians and antiquaries, which tends to throw the blame of the rupture in 1368 upon Edward III.\* Unfounded as was his pretension to the crown of France, and actuated as we must consider him by the most ru-

ward reserves to himself the right of creating the province of Aquitaine into a kingdom. So high were the notions of this great monarch, in an age when the privilege of creating new kingdoms was deemed to belong only to the pope and the emperor. *Etiam si per nos hujusmodi provinciæ ad regalis honoris titulum et fastigium imposterum sublimentur; quam erectionem faciendam per nos ex tunc specialiter reservamus.*

\* Besides Villaret, and other historians, the reader, who feels any curiosity on this subject, may consult three memoirs in the 15th volume of the Academy of Inscriptions, by MM. Sécousse, Salier, and Bonamy.—These distinguished antiquaries unite, but the third with much less confidence and passion than the other two, in charging the mission upon Edward. The observations in the text will serve, I hope, to repel their arguments, which, I may be permitted to observe, no English writer has hitherto undertaken to answer. This is not said in order to assume any praise to myself; in fact, I have been guided, in a great degree, by one of the adverse counsel, M. Bonamy, whose statement of facts is very fair, and makes me suspect a little, that he saw the weakness of his own cause.

The authority of Christine de Pisan, a contemporary panegyrist of the French king, is not perhaps very material in such a question; but she seems wholly ignorant of this supposed omission on Edward's side, and puts the justice of Charles V.'s war on a very different basis; namely, that treaties not conducive to the public interest ought not to be kept.—*Collection des Mémoires*, t. v. p. 137. A principle more often acted upon than avowed!

ous ambition, his character was unblemished by ill faith. There is no apparent cause to impute the ravages made in France by soldiers formerly in the English service to his instigation, nor any proof of a connexion with the king of Navarre, subsequently to the peace of Bertigni. But a good lesson may be drawn by conquerors from the change of fortune that befell Edward III. A long warfare, and unexampled success, had procured for him some of the richest provinces of France. Within a short time he was entirely stripped of them, less through any particular misconduct, than in consequence of the intrinsic difficulty of preserving such acquisitions. The French were already knit together as one people; and even those, whose feudal duties sometimes led them into the field against their sovereign, could not endure the feeling of dismemberment from the monarchy. When the peace of Bretigni was to be carried into effect, the nobility of the South remonstrated against the loss of the king's sovereignty, and shewed, it is said, in their charters granted by Charlemagne, a promise never to transfer the right of protecting them to another. The citizens of Rochelle implored the king not to desert them, and protested their readiness to pay half their estates in taxes, rather than fall under the power of England. John with heaviness of heart persuaded these faithful people to comply with that destiny which he had not been able to surmount. At length they sullenly submitted: we will obey, they said, the English with our lips, but our hearts shall never forget their alle-

giance.\* Such unwilling subjects might perhaps have been won by a prudent government; but the temper of the Prince of Wales, which was rather stern and arbitrary, did not conciliate their hearts to his cause.† After the expedition in Castile, a most injudicious and fatal enterprize, he attempted to impose a heavy tax upon Guienne. This was extended to the lands of the nobility, who claimed an immunity from all impositions. Many of the chief lords in Guienne and Gascony carried their complaints to the throne of Charles V. who had succeeded his father in 1364, appealing to him as the prince's sovereign and judge. After a year's delay, the king ventured to summon the Black Prince to 1368 answer these charges before the peers of

France, and the war immediately recommenced between the two countries.‡

Though it is impossible to reconcile the conduct of Charles upon this occasion to those stern principles of rectitude which ought always to be obeyed, yet

\* Froissart, part i. chap. 214.

† See an anecdote of his difference with the seigneur d'Albrett, one of the principal barons in Gascony, to which Froissart, who was then at Bordeaux, ascribes the alienation of the southern nobility, chap. 244.—Edward III. soon after the peace of Bretigni, revoked all his grants in Guienne.—Rymer, t. vi. p. 391.

‡ On November 20, 1368, some time before the summons of the Prince of Wales, a treaty was concluded between Charles, and Henry, king of Castile, wherein the latter expressly stipulates, that whatever parts of Guienne or England he might conquer, he would give up to the king of France.—Rymer, t. vi. p. 598.

excepting the injustice of Edward in the former war, and the miseries which he inflicted upon an unoffending people in the prosecution of his claim, will go far towards extenuating this breach of the treaty of Bretigni. It is observed, indeed, with some truth by Rapin, that we judge of Charles's prudence by the event; and that if he had been unfortunate in the war, he would have brought on himself the reproaches of all mankind, and even of those writers who are now most ready to extol him. But his measures had been so sagaciously taken, that except through that perverseness of fortune, against which, especially in war, there is no security, he could hardly fail of success. The elder Edward was declining through age, and the younger through disease; the ceded provinces were eager to return to their native king, and their garrisons, as we may infer by their easy reduction, feeble and ill-supplied. France, on the other hand, had recovered breath after her losses; the sons of those who had fallen or fled at Poitiers were in the field; a king, not personally warlike, but eminently wise and popular, occupied the throne of the rash and intemperate John. She was restored by the policy of Charles V. and the valour of du Guesclin. This hero, a Breton gentleman without fortune, or exterior graces, was the greatest ornament of France during that age. Though inferior, as it seems, to Lord Chandos in military skill, as well as in the polished virtues of chivalry, his unwearied activity, his talent of inspiring confidence, his good fortune, the generosity

and frankness of his character, have preserved a fresh recollection of his name, which has hardly been the case with our countryman.

In a few campaigns, the English were deprived of almost all their conquests, and even, in a great degree, of their original possessions in Guienne. They were still formidable enemies, not only from their courage and alacrity in the war, but on account of the keys of France, which they held in their hands; Bordeaux, Bayonne and Calais, by inheritance or conquest; Brest and Cherbourg, in mortgage from their allies, the duke of Britanny and king of Navarre. But the successor of Edward III. was Richard II.; a reign of feebleness and sedition gave no opportunity for prosecuting schemes of ambition. The war, protracted with few distinguished events for several yeras, was at length suspended by repeated armistices, not indeed very strictly observed and which the animosity of the English would not permit to settle in any regular treaty. Nothing less than the terms obtained at Bretigni, emphatically called the Great Peace, would satisfy a frank and courageous people, who deemed themselves cheated by the manner of its infraction. The war was therefore always popular in England, and the credit which an ambitious prince, Thomas, duke of Gloucester, obtained in that country, was chiefly owing to the determined opposition which he shewed to all French connexions. But the politics of Richard II. were of a different cast; and Henry IV. was equally anxious to avoid hostilities with France; so that be-

fore the unhappy condition of that kingdom tempted his son to revive the claims of Edward in still more favourable circumstances, there had been thirty years of respite, and even some intervals of friendly intercourse between the two nations. Both indeed were weakened by internal discord; but France more fatally than England. But for the calamities of Charles VI.'s reign, she would probably have expelled her enemies from the kingdom. The strength of that fertile and populous country was recruited with surprising rapidity. Sir Hugh Cavalerey, a famous captain in the wars of Edward III. while serving in Flanders, laughed at the herald, who assured him that the king of France's army, then entering the country, amounted to 26,000 lances; asserting that he had often seen their largest musters, but never so much as a fourth part of the number.\* The relapse of this great kingdom under Charles VI. was more painful and perilous than her first crisis; but she recovered from each through her intrinsic and inextinguishable resources.

Charles V. surnamed the Wise, after a reign, which, if we overlook a little obliquity in the rupture of the peace of Bretigni, may be deemed one of the most honourable in French history, dying prematurely, left the crown to his son, a boy of thirteen, under the care of three ambitious uncles, the dukes of Anjou, Berry, and Burgundy. Charles had retrieved the glory, restored the tranquility, revived the

\* Froissart, p. ii. c. 142.

spirit of his country ; the severe trials which exercised his regency, after the battle of Poitiers, had disciplined his mind ; he became a sagacious statesman, an encourager of literature, a beneficent lawgiver. He erred doubtless, though upon plausible grounds, in accumulating a vast treasure, which the duke of Anjou seized before he was cold in the grave. But all the fruits of his wisdom were lost in the succeeding reign. In a government essentially popular, the youth or imbecility of the sovereign creates no material derangement. In a monarchy, where all the springs of the system depend upon one central force, these accidents, which are sure in the course of a few generations to recur, can scarcely fail to dislocate the whole machine. During the forty years that Charles VI. bore the name of king, rather than reigned, in France, that country was reduced to a state far more deplorable than during the captivity of John.

A great change had occurred in the political condition of France during the fourteenth century. As the feudal militia became unserviceable, the expenses of war were increased through the necessity of taking troops into constant pay ; and while more luxurious refinements of living heightened the temptation to profuseness, the means of enjoying them were lessened by improvident alienations of the domain. Hence taxes, hitherto almost unknown, were levied incessantly, and with all those circumstances of oppression, which are natural to the fiscal proceedings of an arbitrary government. These, as has been said before, gave rise to the unpopularity of the two



first Valois, and were nearly leading to a complete revolution in the convulsions that succeeded the battle of Poitiers. The confidence reposed in Charles V.'s wisdom and œconomy kept every thing at rest during his reign, though the taxes were still very heavy. But the seizure of his vast accumulations by the duke of Anjou, and the ill faith with which the new government imposed subsidies, after promising their abolition, provoked the people of Paris, and sometimes of other places, to repeated seditions. The States General not only compelled the government to revoke these impositions, and restore the nation, at least according to the language of edicts, to all their liberties, but, with less wisdom, refused to make any grant of money. Indeed a remarkable spirit of democratical freedom was then rising in those classes, on whom the crown and nobility had so long trampled. An example was held out by the Flemings, who, always tenacious of their privileges, because conscious of their ability to maintain them, were engaged in a furious conflict with Louis, count of Flanders.\* The court of France took part in this

\* The Flemish rebellion, which originated in an attempt, suggested by bad advisers to the count, to impose a tax upon the people of Ghent without their consent, is related in a very interesting manner by Froissart, p. ii. c. 37. &c. who equals Herodotus in simplicity, liveliness, and power over the heart. I would advise the historical student to acquaint himself with these transactions, and with the corresponding tumults at Paris. They are among the eternal lessons of history; for the unjust encroachments of courts, the intemperate passions of the multitude, the ambition of demagogues, the cruelty of victorious factions, will never cease to have their parallels and their ana-

war; and after obtaining a decisive victory over the citizens of Ghent, Charles VI. returned to chastise those of Paris.\* Unable to resist the royal army, the city was treated as the spoil of conquest; its immunities abridged; its most active leaders put to death; a fine of uncommon severity imposed; and the taxes renewed by arbitrary prerogative. But the people preserved their indignation for a favourable moment; and were unfortunately led by it, when rendered subservient to the ambition of others, into a series of crimes, and a long alienation from the interests of their country.

It is difficult to name a limit beyond which taxes will not be borne without impatience, when they

logies; while the military achievements of distant times afford, in general, no instruction, and can hardly occupy too little of our time in historical studies. The prefaces to the fifth and sixth volumes of the *Ordonnances des Rois de France*, contain more accurate information as to the Parisian disturbances, than can be found in Froissart.

\* If Charles VI. had been defeated by the Flemings, the insurrection of the Parisians, Froissart says, would have spread over France; *toute gentillesse et noblesse eût été morte et perdue en France*; nor would the *Jacquerie* have ever been *si grande et si horrible*. c. 120. To the example of the Gantois he ascribes the tumults which broke out about the same time in England as well as in France. c. 84. The Flemish insurrection would probably have had more important consequences, if it had been cordially supported by the English government. But the danger of encouraging that democratical spirit which so strongly leavened the commons of England, might justly be deemed by Richard II.'s council much more than a counterbalance to the advantage of distressing France. When too late, some attempts were made, and the Flemish towns acknowledged Richard as king of France in 1384. Rymer, t. vii. p. 448.

appear to be called for by necessity, and faithfully applied; nor is it impracticable for a skilful minister to deceive the people in both these respects. But the sting of taxation is wastefulness. What high-spirited man could see without indignation the earnings of his labour, yielded ungrudgingly to the public defence, become the spoils of parasites and speculators? It is this that mortifies the liberal hand of public spirit; and those statesmen, who deem the security of government to depend not on laws and armies, but on the moral sympathies and prejudices of the people, will vigilantly guard against even the suspicion of prodigality. In the present stage of society, it is impossible to conceive that degree of misapplication which existed in the French treasury under Charles VI., because the real exigencies of the state could never again be so inconsiderable. Scarcely any military force was kept up; and the produce of the grievous impositions then levied, was chiefly lavished upon the royal household, or plundered by the officers of government.\* This naturally resulted from the peculiar and afflicting circumstances of this reign. The duke of Anjou pretended to be entitled by the late king's appointment, if not by the constitution of France, to exercise the

\* The expenses of the royal household, which under Charles V. were 94,000 livres, amounted in 1412 to 450,000. Villaret, t. xiii. p. 243. Yet the king was so ill supplied, that his plate had been pawned. When Montagu, minister of the finances, was arrested in 1409, all his plate was found concealed in his house.

government as regent during the minority ;\* but this period, which would naturally be very short, a law of Charles V. having fixed the age of majority at thirteen, was still more abridged by consent ; and after the young monarch's coronation, he was consi-

\* It has always been an unsettled point, whether the presumptive heir is entitled to the regency of France ; and if he be so to the regency, whether this includes the custody of the minor's person. The particular case of the duke of Anjou is subject to a considerable apparent difficulty. Two instruments of Charles V., bearing the same date of October 1374, as published by Dupuy, (*Traité de majorité des Rois*, p. 161.) are plainly irreconcilable with each other ; the former giving the exclusive regency to the duke of Anjou, reserving the custody of the minor's person to other guardians ; the latter conferring not only this custody, but the government of the kingdom, on the queen, and on the dukes of Burgundy and Bourbon, without mentioning the duke of Anjou's name. Daniel calls these testaments of Charles V., whereas they are in the form of letters patent ; and supposes that the king had suppressed both, as neither party seems to have availed itself of their authority in the discussions that took place after the king's death. (*Hist. de France*, t. iii. p. 662. edit. 1720.) Villaret, as is too much his custom, slides over the difficulty without notice. But M. de Bréquigny, (*Mém. de l'Acad. des Inscript.* t. i. p. 533.) observes that the second of these instruments, as published by M. Sécouse, in the *Ordonnances des Rois*, t. vi. p. 406. differs most essentially from that in Dupuy, and contains no mention whatever of the government. It is therefore easily reconcilable with the first, that confers the regency on the duke of Anjou. As Dupuy took it from the same source as Sécouse, namely, the *Tresor des Chartes*, a strong suspicion of wilful interpolation falls upon him, or upon the editor of his posthumous work, printed in 1655. This date will readily suggest a motive for such an interpolation, to those who recollect the circumstances of France at that time, and for some years before ; Anne of Austria having maintained herself in possession of a testamentary regency against the presumptive heir.

dered as reigning with full personal authority.—Anjou, Berry, and Burgundy, along with the king's maternal uncle, the duke of Bourbon, divided the actual exercise of government.

The first of these soon undertook an expedition into Italy, to possess himself of the crown of Naples, in which he perished. Berry was a profuse and voluptuous man, of no great talents; though his rank, and the middle position which he held between struggling parties, made him rather conspicuous throughout the revolutions of that age. The most respectable of the king's uncles, the duke of Bourbon, being further removed from the royal stem, and of an unassuming character, took a less active part than his three coadjutors. Burgundy, an ambitious and able prince, maintained the ascendancy, until Charles, weary of a restraint, which had been protracted by his uncles till he was in his twenty-first year, took the reins into his own hands. The dukes <sup>1387</sup> of Burgundy and Berry retired from court, and the administration was committed to a different set of men, at the head of whom appeared the constable de Clisson, a soldier of great fame in the English wars. The people rejoiced in the fall of the princes, by whose exactions they had been plundered; but the new ministers soon rendered themselves odious by similar conduct. The fortune of Clisson, after a few years favour, amounted to 1,700,000 livres, equal in weight of silver, to say nothing of the depreciation of money, to ten times that sum at present.\*

\* Froissart. p. iv. c. 46.

Charles VI. had reigned five years from his minority, when he was seized with a derangement of intellect, which continued, through a series of recoveries and relapses, to his death. He passed  
1393 thirty years in a pitiable state of suffering, neglected by his family, particularly by that most infamous of women, Isabel of Bavaria, his queen, to a degree which is hardly credible. The ministers were immediately disgraced; the princes re-assumed their stations. For several years the duke of Burgundy conducted the government. But this was in opposition to a formidable rival, Louis, duke of Orleans, the king's brother. It was impossible that a prince so near to the throne, favoured, by the queen perhaps with criminal fondness, and by the people on account of his external graces, should not acquire a share of power. He succeeded at length in obtaining the whole management of affairs; wherein the outrageous dissoluteness of his conduct, and still more the excessive taxes imposed, rendered him altogether odious. The Parisians compared his administration with that of the duke of Burgundy; and from that time ranged themselves on the side of the latter and his family, throughout the long distractions to which the ambition of these princes gave birth.

The death of the duke of Burgundy, in 1404, after several fluctuations of success between him and the duke of Orleans, by no means left his party without a head. Equally brave and ambitious, but far more audacious and unprincipled, his son John,

surnamed Sans-peur, sustained the same contest. A reconciliation had been, however, brought about with the duke of Orleans; they had sworn reciprocal friendship, and participated, as was the custom, in order to render these obligations more solemn, in the same communion. In the midst of this outward harmony, the duke of Orleans was assassinated in the streets of Paris. After a slight attempt at concealment, Burgundy avowed and boasted of <sup>1407</sup> the crime, to which he had been instigated, it is said, by somewhat more than political jealousy.\* From this fatal moment, the dissensions of the royal family began to assume the complexion of civil war. The queen, the sons of the duke of Orleans, with the dukes of Berry and Bourbon, united against the assassin. But he possessed, in addition to Burgundy, his own apanage, the county of Flanders, as his maternal inheritance; and the people of Paris, who hated the duke of Orleans, readily forgave, or rather exulted in his murder.

It is easy to estimate the weakness of the government, from the terms upon which the duke of Burgundy was permitted to obtain pardon at Chartres, a year after the perpetration of the crime. As soon as he entered the royal presence, every one rose, except the king, queen, and dauphin. The duke, approaching the throne, fell on his knees; when a lord, who

\* Orleans is said to have boasted of the duchess of Burgundy's favours. Vill. t. xii. p. 474. Amelgard, who wrote about eighty years after the time, says, *vim etiam inferre attentare præsumpsit*. Notices des Manuscrits du Roi. t. i. p. 411.

acted as a sort of counsel for him, addressed the king : “ Sire, the duke of Burgundy, your cousin  
 “ and servant is come before you, being informed  
 “ that he has incurred your displeasure, on account  
 “ of what he caused to be done to the duke of Or-  
 “ leans your brother, for your good and that of your  
 “ kingdom, as he is ready to prove when it shall  
 “ please you to hear it ; and therefore requests  
 “ you, with all humility, to dismiss your resentment  
 “ towards him, and to receive him into your fa-  
 “ vour.”\*

This insolent apology was all the atonement that could be extorted for the assassination of the first prince of the blood. It is not wonderful that the  
 1410 duke of Burgundy soon obtained the management of affairs, and drove his adversaries from the capital. The princes, headed by the father-in-law of the young duke of Orleans, the count of Armagnac, from whom their party was now denominated, raised their standard against him ; and the north of France was rent to pieces by a protracted civil war, in which neither party scrupled any extremity of pillage or massacre. Several times peace was made ; but each faction, conscious of their own insincerity, suspected that of their adversaries. The king, of whose name both availed themselves, was only in some doubtful intervals of reason, capable of rendering legitimate the acts of either. The dauphin, aware of the tyranny which each faction exer-

\* Monstrelet, part i. f. 112.



cised in its turn, was forced, even at the expense of perpetuating a civil war, to balance one against the other, and permit neither to be wholly subdued. He gave peace to the Armagnacs at Auxerre, in despite to the duke of Burgundy; and having afterwards united with them against this prince, 1412 and carried a successful war into Flanders, he disappointed their revenge by concluding with him a treaty at Arras. 1414

This dauphin, and his next brother, died within sixteen months of each other, by which the rank devolved upon Charles, youngest son of the king. The count of Armagnac, now constable of France, retained possession of the government. But his severity and the weight of taxes revived the Burgundian party in Paris, which a rigid proscription had endeavoured to destroy. He brought on his head the implicable hatred of the queen, whom he had not only shut out from public affairs, but disgraced by the detection of her gallantries. 1417 Notwithstanding her ancient enmity to the duke of Burgundy, she made overtures to him, and being delivered by his troops from confinement, declared herself openly on his side. A few obscure persons stole the city keys, and admitted the Burgundians into Paris. The tumult which arose shewed in a moment the disposition of the inhabitants; but this was more horribly displayed a few days afterwards, when the populace rushing to the prisons, massacred the constable d' Armagnac and his partizans. 1418 Between three and four thou-

sand persons were murdered on this day, which has no parallel but what our own age has witnessed, in the massacre perpetrated by the same ferocious populace of Paris, under circumstances nearly similar.

1419 Not long afterwards an agreement took place between the duke of Burgundy, who had now the king's person, as well as the capital, in his hands, and the dauphin, whose party was enfeebled by the loss of almost all its leaders. This reconciliation, which mutual interest should have rendered permanent, had lasted a very short time, when the duke of Burgundy was assassinated at an interview with Charles, in his presence, and by the hands of his friends, though not perhaps with his previous knowledge.\* From whomsoever the crime pro-

\* There are three suppositions conceivable to explain this important passage in history, the assassination of John Sans-pieur. 1. It was pretended by the dauphin's friends at the time, and has been maintained more lately, (St. Foix, *Essais sur Paris*, t. iii. p. 209. edit. 1767.) that he had premeditated the murder of Charles, and that his own was an act of self-defence. This is, I think, quite improbable; the dauphin had a great army near the spot, while the duke was only attended by five hundred men. Villaret indeed, and St. Foix, in order to throw suspicion upon the duke of Burgundy's motives, assert that Henry V. accused him of having made proposals to him which he could not accept without offending God; and conjecture that this might mean the assassination of the dauphin. But the expressions of Henry do not relate to any private proposals of the duke, but to demands made by him and the queen, as proxies for Charles VI., in conferences for peace, which, he says, he could not accept, without offending God, and contravening his own letters patent. (Rymier, t. ix p. 790.) It is not, however, very clear what this means. 2. The next hypothesis is, that it was the deliberate act of Charles. But his

ceeded, it was a deed of infatuation ; and plunged France afresh into a sea of perils, from which the union of these factions had just afforded a hope of extricating her.

It has been mentioned already, that the English war had almost ceased during the reigns of Richard II. and Henry IV. The former of these was attached by inclination, and latterly by marriage, to the court of France : and though the French government showed at first some disposition to revenge his dethronement, yet the new king's success, as well as domestic quarrels, deterred it from any serious renewal of the war. A long commercial connexion had subsisted between England and Flanders, which the dukes of Burgundy, when they became sovereigns of the latter country upon the death of Count Louis in 1384, were studious to preserve by separate truces.\* They acted upon the same pacific policy, when their interest predominated in the councils of

youth, his feebleness of spirit, and especially, the consternation into which, by all testimonies, he was thrown by the event, are rather adverse to this explanation. 3. It remains only to conclude, that Tanegui de Chastel, and other favourites of the dauphin, long attached to the Orleans faction, who justly regarded the duke as an infamous assassin, and might question his sincerity, or their own safety, if he should regain the ascendant, took advantage of this opportunity to commit an act of retaliation, less criminal, but not less ruinous in its consequences, than that which had provoked it. Charles, however, by his subsequent conduct, recognized their deed, and naturally exposed himself to the resentment of the young duke of Burgundy.

\* Rymer, t. viii. p. 511. Villaret, t. xii. p. 174.

France. Henry had even a negotiation pending for the marriage of his eldest son with a princess of Burgundy,\* when an unexpected proposal from the opposite side set more tempting views before his eyes. The Armagnacs, pressed hard by the duke of Burgundy, offered in consideration of only 4000 troops, the pay of which they would themselves defray, to assist him in the recovery of Guienne and Poitou.

1412 Four princes of the blood, Berry, Bourbon, Orleans, and Alençon, disgraced their names by signing this treaty.† Henry broke off his alliance with Burgundy, and sent a force into France, which found on its arrival, that the princes had made a separate treaty, without the least concern for their English allies. After his death, Henry V. engaged for some time in a series of negotiations with the French court, where the Orleans party now prevailed, and with the duke of Burgundy. He even secretly treated at the same time for a marriage with Catharine of France, (which seems to have been his favourite, as it was ultimately his successful object,) and with a daughter of the duke; a duplicity not creditable to his memory.‡ But Henry's ambition, which aimed at the highest quarry, was not long fettered by negotiation; and indeed his proposals of marrying Catharine were coupled with such exorbitant demands, as France, notwithstanding all her weakness, could not admit; though she would have ceded Guienne, and

\* Rymer, t. viii. p. 721.

† Rymer, t. viii. pp. 726, 737, 738.

‡ Rymer, t. ix. p. 136.

given a vast dowry with the princess.\* He invaded Normandy, took Harfleur, and won the great battle of Azincourt on his march to Calais.† 1415

The flower of French chivalry was mowed down in this fatal day, but especially the chiefs of the Orleans party, and the princes of the royal blood, met with death or captivity. Burgundy had still suffered nothing; but a clandestine negociation had secured the duke's neutrality, though he seems not to have entered into a regular alliance till after the battle of Azincourt; when, by a secret treaty at Calais, he acknowledged the right of Henry to the crown of France, and his own obligation to do him homage, though its performance was to be suspended till Henry should become master of a considerable part of the kingdom.‡ In a second invasion, the English atchieved the conquest of Normandy; and this, in all subsequent ne-

\* The terms required by Henry's ambassadors in 1415 were the crown of France; or, at least, reserving Henry's rights to that, Normandy, Touraine, Maine, Guienne, with the homage of Britany and Flanders. The French offered Guienne and Saintonge, and a dowry of 800,000 gold crowns for Catharine. The English demanded 2,000,000. Rym. t. ix. p. 218.

† The English army at Azincourt was probably of not more than 15,000 men; the French were, at the least, 50,000, and, by some computations, much more numerous. They lost 10,000 killed, of whom 9,000 were knights or gentlemen. Almost as many were made prisoners. The English, according to Monstrelet, lost 1,600 men; but their own historians reduce this to a very small number. It is curious that the Duke of Berry, who advised the French to avoid an action, had been in the battle of Poitiers, fifty-nine years before. Vill. t. xiii. p. 355.

‡ Confer Rym. t. ix. p. 34. 138. 304. 394. The last reference is to the treaty of Calais.

gociations for peace during the life of Henry, he would never consent to relinquish. After several conferences, which his demands rendered abortive, the French court at length consented to add Normandy to the cessions made in the peace of Bretigni ;\* and the treaty, though labouring under some difficulties, seems to have been nearly completed, when the duke of Burgundy, for reasons unexplained, suddenly came to a reconciliation with the dauphin. This event, which must have been intended adversely to Henry, would probably have broken off all parley on the subject of peace, if it had not been speedily followed by one still more surprising, the assassination of the duke of Burgundy at Montereau.

An act of treachery so apparently unprovoked inflamed the minds of that powerful party, which had looked up to the duke as their leader and patron. The city of Paris, especially abjured at once its respect for the supposed author of the murder, though the legitimate heir of the crown. A solemn oath was taken by all ranks to revenge the crime ; the nobility, the clergy, the parliament, vying with the populace in their invectives against Charles, whom they now styled only pretended (*soi disant*) dauphin. Philip, son of the assassinated duke, who with all the popularity and much of the ability of his father, did not inherit his depravity, was instigated by a pardonable

\* Rym. t. ix. p. 628. 764. Nothing can be more insolent than the tone of Henry's instructions to his commissioners, p. 628.

excess of filial resentment, to ally himself with the king of England. These passions of the people and the duke of Burgundy, concurring with the imbecility of Charles VI., and the rancour of Isabel towards her son, led to the treaty of Troyes. This compact, signed by the queen and duke, as proxies of the king, who had fallen into a state of unconscious idiocy, stipulated that Henry V., upon his marriage with Catharine, should become immediately regent of France, and, after the death of Charles, succeed to the kingdom, in exclusion not only of the dauphin, but of all the royal family.\* It is unnecessary to remark that these flagitious provisions were absolutely invalid. But they had at the time the strong sanction of force; and Henry might plausibly flatter himself with a hope of establishing his own usurpation as firmly in France, as his father's had been in England. What neither the comprehensive policy of Edward III., the energy of the Black Prince, the valour of their Knollyses and Chandoses, nor his own victories could attain, now seemed, by a strange vicissitude of fortune, to court his ambition. During two years

\* As if through shame on account of what was to follow, the first articles contain petty stipulations about the dower of Catharine. The sixth gives the kingdom of France after Charles's decease to Henry and his heirs. The seventh concedes the immediate regency. Henry kept Normandy by right of conquest, not in virtue of any stipulation in the treaty, which he was too proud to admit. The treaty of Troyes was confirmed by the States General, or rather by a partial convention which assumed the name, in December, 1420. Rym. t. x. p. 30. The parliament of England did the same. Id. p. 110. It is printed at full length by Villaret, t. xv. p. 84.

that Henry lived after the treaty of Troyes, he governed the north of France with unlimited authority in the name of Charles VI. The latter survived his son-in-law but a few weeks; and the infant Henry VI. was immediately proclaimed king of France and England, under the regency of his uncle the duke of Bedford.

Notwithstanding the disadvantage of a minority, the English cause was less weakened by the death of Henry, than might have been expected. The duke of Bedford partook of the same character, and  
1422 resembled his brother in faults as well as virtues; in his haughtiness and arbitrary temper, as in his energy and address. At the accession of Charles VII., the usurper was acknowledged by all the northern provinces of France, except a few fortresses, by most of Guienne, and the  
1423 dominions of Burgundy. The duke of Britany soon afterwards acceded to the treaty of Troyes, but changed his party again several times within a few years. The central provinces, with Languedoc, Poitou, and Dauphiné, were faithful to the king. For some years the war continued without any decisive result; but the balance was clearly swayed in favour of England. For this it is not difficult to assign several causes. The animosity of the Parisians and the duke of Burgundy against the Armagnac party still continued, mingled in the former with dread of the king's return, whom they judged themselves to have inexpially offended.— The war had brought forward some accomplished



commanders in the English army ; surpassing, not indeed in valour and enterprize, but in military skill, any whom France could oppose to them. Of these the most distinguished, besides the duke of Bedford himself, were Warwick, Salisbury and Talbot. Their troops too were still very superior to the French. But this we must in candour allow, proceeded in a great degree from the mode in which they were raised. The war was so popular in England, that it was easy to pick the best and stoutest recruits,\* and their high pay allured men of respectable condition to the service. We find in Rymer a contract of the earl of Salisbury to supply a body of troops, receiving a shilling a day for every man at arms, and sixpence for each archer.† This is perhaps equal to fifteen times the sum at our present value of money. They were bound indeed to furnish their own equipments and horses. But France was totally exhausted by her civil and foreign war ; and incompetent to defray the expense even of the small force which defended the wreck of the monarchy. Charles VII. lived in the utmost poverty at Bourges.‡ The nobility had scarcely

\* Monstrelet, part i. f. 303.

† Rym. t. x. p. 392. This contract was for 600 men at arms, including six bannerets, and thirty-four bachelors; and for 1,700 archers; bien et suffisamment montez, armez, et ar-raiez comme a leurs estats appartient. The pay was, for the earl 6s. 8d. a day; for a banneret, 4s.; for a bachelor, 2s.; for every other man at arms, 1s.; and for each archer, 6d. Artillery-men were paid higher than men at arms.

‡ Villaret, t. xiv. p. 302.

recovered from the fatal slaughter of Azincourt, and the infantry, composed of peasants or burgesses, which had made their army so numerous upon that day, whether from inability to compel their services, or experience of their inefficacy, were never called into the field. It became almost entirely a war of partizans. Every town in Picardy, Champagne, Maine, or wherever the contest might be carried, was a fortress ; and in the attack or defence of these garrisons, the valour of both nations was called into constant exercise. This mode of warfare was undoubtedly the best in the actual state of France, as it gradually improved her troops, and flushed them with petty successes. But what principally led to its adoption, was the license and insubordination of the royalists, who, receiving no pay, owned no controul, and thought that, provided they acted against the English and Burgundians, they were free to choose their own points of attack. Nothing can more evidently shew the weakness of France, than the high terms by which Charles VII. was content to purchase the assistance of some Scottish auxiliaries. The earl of Buchan was made constable ; the earl of Douglas had the duchy of Touraine, and a new title, Lieutenant General of the kingdom. At a subsequent time, Charles offered the province of Saintonge to James I., for an aid of 6,000 men.—These Scots fought bravely for France, though unsuccessfully, at Crevant and Verneuil ; but it must be owned they set a sufficient value upon their service. Under all these disadvantages, it would be

unjust to charge the French nation with any inferiority of courage, even in the most unfortunate periods of this war. Though frequently panic-struck in the field of battle, they stood sieges of their walled towns with matchless spirit and endurance. Perhaps some analogy may be found between the character of the French commonalty during the English invasion, and the Spaniards of the late peninsular war. But to the exertions of those brave nobles who restored the monarchy of Charles VII., Spain has afforded no adequate parallel.

It was, however, in the temper of Charles VII. that his enemies found their chief advantage. This prince is one of the few, whose character has been improved by prosperity. During the calamitous morning of his reign, he shrunk from fronting the storm, and strove to forget himself in pleasure. Though brave, he was never seen in war; though intelligent, he was governed by flatterers. Those who had committed the assassination at Montereau under his eyes, were his first favourites; as if he had determined to avoid the only measure through which he could hope for better success, a reconciliation with the duke of Burgundy. The count de Richemont, brother of the duke of Britany, who became afterwards one of the chief pillars of his throne, consented to renounce the English alliance, and accept the rank of constable, on condition that these favourites should quit the court. Two others, who suc- 1424  
cessively gained a similar influence over Charles, Richemont publicly caused to be assassi-

nated, assuring the king, that it was for his own and the public good. Such was the debasement of morals and government, which twenty years of civil war had produced ! Another favourite, **La Tremouille**, took the dangerous office, and, as might be expected, employed his influence against **Richemont**, who for some years lived on his own domains, rather as unarmed neutral than a friend, though he never lost his attachment to the royal cause.

It cannot therefore surprise us, that with all these advantages the regent duke of **Bedford** had almost completed the capture of the fortresses north of the **Loire**, when he invested **Orleans** in 1428. If this city had fallen, the central provinces, which were less furnished with defensible places, would have lain open to the enemy ; and it is said that **Charles VII.** in despair was about to retire into **Dauphiné**. At this time his affairs were restored by one of the most marvellous revolutions in history. A country girl overthrew the power of **England**. We cannot pretend to explain the surprising story of the **Maid of Orleans** ; for, however easy it may be to suppose that a heated and enthusiastic imagination produced her own visions, it is a much greater problem to account for the credit they obtained, and for the success that attended her. Nor will this be solved by the hypothesis of a concerted stratagem ; which, if we do not judge altogether from events, must appear liable to so many chances of failure, that it could not have suggested itself to any rational person. However, it is certain that the appearance of **Joan of Arc**

turned the tide of war, which from that moment flowed without interruption in Charles's favour. A superstitious awe enfeebled the sinews of the English. They hung back in their own country, or deserted from the army, through fear of the incantation, by which alone they conceived so extraordinary a person to succeed.\* As men always make sure of Providence for an ally, whatever untoward fortune appeared to result from preternatural causes, was at once ascribed to infernal enemies; and such bigotry may be pleaded as an excuse, though a very miserable one, for the detestable murder of this heroine.†

The spirit which Joan of Arc had roused did not subside. France recovered confidence in her own strength, which had been chilled by a long course of adverse fortune. The king too shook off his in-

\* Rym. t. x. p. 458—472. This however is conjecture; for the cause of their desertion is not mentioned in these proclamations, though Rymer has printed it in their title. But the duke of Bedford speaks of the turn of success as astonishing, and due only to the superstitious fear which the English had conceived of a female magician. Rymer, t. x. p. 408.

† M. de l'Averdy, to whom we owe the copious account of the proceedings against Joan of Arc, as well as those which Charles VII. instituted in order to rescind the former, contained in the third volume of *Notices des Manuscrits du Roi*, has justly made this remark, which is founded on the eagerness shewn by the university of Paris in the prosecution, and on its being conducted before an inquisitor; a circumstance exceedingly remarkable in the ecclesiastical history of France. But another material observation arises out of this. The Maid was pursued with peculiar bitterness by her countrymen of the English, or rather Burgundian faction; a proof, that in 1430 their animosity against Charles VII. was still ardent.

dolence,\* and permitted Richemont to exclude his unworthy favourites from the court. This led to a very important consequence. The duke of Burgundy, whose alliance with England had been only

\* It is a current piece of history, that Agnes Sorel, mistress of Charles VII. had the merit of dissuading him from giving up the kingdom as lost, at the time when Orleans was besieged in 1428. Mezeray, Daniel, Villaret, and, I believe, every other modern historian, have mentioned this circumstance; and some of them, among whom is Hume, with the addition, that Agnes threatened to leave the court of Charles for that of Henry, affirming, that she was born to be the mistress of a great king. The latter part of this tale is evidently a fabrication, Henry VI. being at the time a child of seven years old. But I have, to say the least, great doubts of the main story. It is not mentioned by contemporary writers. On the contrary, what they say of Agnes leads me to think the dates incompatible. Agnes died (in child-bed, as some say) in 1450; twenty-two years after the siege of Orleans. Monstrelet says, that she had been about five years in the service of the queen, and the king taking pleasure in her liveliness and wit, common fame had spread abroad, that she lived in concubinage with him. She certainly had a child, and was willing that it should be thought the king's; but he always denied it, *et le pouvoit bien avoir emprunté ailleurs.* pt. iii. f. 25. Olivier de la Marche, another contemporary, who lived in the court of Burgundy, says, about the year 1444, *le Roy avoit nouvellement eslévé une pauvre demoiselle, gentifemme, nommée Agnes Sorel, et mis en tel triumphe et tel pouvoir, que son estat estoit a comparer aux grandes princesses de Royaume, et certes c'estoit une des plus belles femmes que je vey oncques, et fit en sa qualité beaucoup au Royaume de France. Elle avancoit devers le Roy jeunes gens d'armes, et gentils compaignons, et dont le Roy, depuis fut bien servy.* La Marche, *Mem. Hist.* t. viii. p. 145. Du Clercq, whose memoirs were first published in the same collection, says, that Agnes mourut par poison moult jeune. *Ib.* t. viii. p. 410. And the continuator of Monstrelet, probably John Chartier, speaks of the youth and beauty of Agnes, which exceeded that of any other woman in France,

the fruit of indignation at his father's murder, fell naturally, as that passion wore out, into sentiments more congenial to his birth and interests. A prince of the house of Capet could not willingly see the inheritance of his ancestors transferred to a stranger. And he had met with provocation both from the re-

and of the favour shewn her by the king, which so much excited the displeasure of the dauphin, on his mother's account, that he was suspected of having caused her to be poisoned. fol. 68. The same writer affirms of Charles VII. that he was, before the peace of Arras, *de moult belle vie et devote*; but afterwards *enlaidit sa vie de tenir malles femmes en son hostel*. &c. fol. 86.

It is for the reader to judge how far these passages render it improbable, that Agnes Sorrel was the mistress of Charles VII. at the siege of Orleans in 1428, and, consequently, whether she is entitled to the praise which she has received, of being instrumental in the deliverance of France. The tradition, however, is as ancient as Francis I. who made in her honour a quatrain which is well known. This probably may have brought the story more into vogue, and led Mezeray, who was not very critical, to insert it in his history, from which it has passed to his followers. Its origin was apparently the popular character of Agnes. She was the Nell Gwyn of France; and justly beloved, not only for her charity and courtesy, but for bringing forward men of merit, and turning her influence, a virtue very rare in her class, towards the public interest. From thence it was natural to bestow upon her, in after times, a merit not ill suited to her character, but which an accurate observation of dates seems to render impossible. But whatever honour I am compelled to detract from Agnes Sorel, I am willing to transfer undiminished to a more unblemished female, the injured queen of Charles VII. Mary of Anjou, who has hitherto only shared with the usurper of her rights the credit of awakening Charles from his pusillanimity. Though I do not know on what foundation even this rests, it is not unlikely to be true, and, in deference to the sex, let it pass undisputed.

gent and the duke of Gloucester; who, in contempt of all policy and justice, had endeavoured, by an invalid marriage with Jacqueline countess of Hainault and Holland to obtain provinces which Burgundy designed for himself. Yet the union of his sister with Bedford, the obligations by which he was bound, and most of all, the favour shewn by Charles VII. to the assassins of his father, kept him for many years on the English side, although rendering it less and less assistance. But at length he concluded a  
 1435 treaty at Arras, the terms of which he dictated rather as a conqueror, than a subject negotiating with his sovereign. Charles, however, refused nothing for such an end; and, in a very short time, the Burgundians were ranged with the French against their old allies of England.

It was now time for the latter to abandon those magnificent projects of conquering France, which temporary circumstances alone had seemed to render feasible. But as it is a natural effect of good fortune in the game of war, to render a people insensible to its gradual change, the English could not persuade themselves that their affairs were irretrievably declining. Hence they rejected the offer of Normandy and Guienne, subject to the feudal superiority of France, which was made to them at the congress of Arras;\*

\* Villaret says: Les plenipotentiaires, de Charles offrirent la cession de la Normandie et de la Guienne, *en tout propriété sous la clause de l'hommage à la couronne*, t. xv. p. 174. But he does not quote his authority, and I do not like to rely on an historian, not eminent in accuracy for fact, or precision in



and some years afterwards, when Paris with the adjacent provinces had been lost, the English ambassadors, though empowered by their private instructions to relax, stood upon demands quite disproportionate to the actual position of affairs.\* As foreign enemies, they were odious even in that part of France which had acknowledged Henry;† and when the duke of Burgundy deserted their side, Paris and every other city were impatient to throw off the yoke. A feeble monarchy, and a selfish council, completed their ruin; the necessary subsidies were raised with difficulty, and, when raised, misapplied. It is a proof of the exhaustion of France, that Charles was unable, for several years, to reduce Normandy or Guienne, which were so ill provided for defence‡. At last he came with collected strength to the contest, and breaking an armistice upon slight pretences, 1440

language. If his expression is correct, the French must have given up the feudal appeal, or *ressort*, which had been the great point in dispute between Edward III. and Charles V. preserving only a homage *per paragium*, as it was called, which implied no actual supremacy. Monstrelet says only, *que per certaines conditions luy seroient accordées les seigneuries de Guienne et Normandie*.

\* See the instructions given to the English negociators in 1439, at length, in Rymer, t. x. p. 724.

† Villaret, t. xiv p. 448.

‡ Amelgard, from whose unpublished memoirs of Charles VII. and Louis XI. some valuable extracts are made in the *Notices des Manuscrits*, t. i. p. 403, attributes the delay in recovering Normandy solely to the king's slothfulness and sensuality. In fact, the people of that province rose upon the English, and almost emancipated themselves with little aid from Charles.

within two years overwhelmed the English garrisons in each of these provinces. All the inheritance of Henry II. and Eleanor, all the conquests of Edward III. and Henry V. except Calais and a small adjacent district, were irrecoverably torn from the crown of England. A barren title, that idle trophy of disappointed ambition, was preserved, with strange obstinacy, to our own age.

In these second English wars, we find little left of that generous feeling, which had, in general, distinguished the contemporaries of Edward III. The very virtues which a state of hostility excites are not proof against its long continuance, and sink at last into brutal fierceness. Revenge and fear excited the two factions of Orleans and Burgundy to all atrocious actions. The troops serving under partizans on detached expeditions, according to the system of the war, lived at free quarters on the people. The histories of the time are full of their crimes, which fell heaviest, as is the common case, upon the unprotected peasantry.\* Even those laws of war, which the

\* Monstrelet *passim*. A long metrical complaint of the people of France, curious as a specimen of versification, as well as a testimony of the misfortunes of the time, may be found in this historian. *part i. fol. 821*. Notwithstanding the treaty of Arras, the French and Burgundians made continual incursions upon each other's frontiers, especially about Laon, and in the Vermandois. So that the people had no help, says Monstrelet, *si non de crier miserablement a Dieu leur createur vengeance; et que pis estoit, quand ils obtenoient aucum sauf-conduit d'aucuns capitaines peu en estoit entretenu, mesme tout d'un parti. pt. ii. f. 139*. These pillagers were called *Ecorcheurs*, because they stripped the people of their shirts.

courteous sympathies of chivalry had enjoined, were swept away by a merciless fury. Garrisons surrendering after a brave defence were put to death. Instances of this are very frequent. Henry V. excepts Alain Blanchard, a citizen who had distinguished himself during the siege, from the capitulation of Rouen, and orders him to execution. At the taking of a town of Champagne, John of Luxemburg, the Burgundian general, stipulates that every fourth and sixth man should be at his discretion; which he exercises by causing them all to be hanged.\* Four hundred English from Pontoise, stormed by Charles VII. in 1441, are paraded in chains and naked through the streets of Paris, and thrown afterwards

And this name superseded that of Armagnacs, by which one side had hitherto been known. Even Xaintrailles and La Hire, two of the bravest champions of France, were disgraced by these habits of outrage. *Ibid.* fol. 144. 150. 175: Oliv. de la Marche, in *Collect. des Mémoires*, t. viii. p. 25: t. v. p. 323.

Pour la plupart, says Villaret, se faire guerrier, ou voleur de grands chemins, signifioit la même chose.

\* Monstrelet, part ii. f. 79. This John of Luxemburg, count de Ligny, was a distinguished captain on the Burgundian side, and for a long time would not acquiesce in the treaty of Arras. He disgraced himself by giving up to the duke of Bedford his prisoner Joan of Arc for 10,000 francs. The famous count de St. Pol was his nephew, and inherited his great possessions in the county of Vermandois. Monstrelet relates a singular proof of the good education which his uncle gave him. Some prisoners having been made in an engagement, si fut le jeune comte de St. Pol mis en voye de guerre; car le comte de Ligny son oncle luy en feit occire aucuns, le quel y prenoit grand plaisir. part ii. fol. 95.

into the Seine. This infamous action cannot but be ascribed to the king.\*

At the expulsion of the English, France emerged from the chaos with an altered character and new features of government. The royal authority and supreme jurisdiction of the parliament were universally recognized. Yet there was a tendency towards insubordination left among the great nobility, arising in part from the remains of old feudal privileges, but still more from that lax administration, which, in the convulsive struggles of the war, had been suffered to prevail. In the south, were some considerable vassals, the houses of Foix, Albret, and Armagnac, who, on account of their distance from the seat of empire, had always maintained a very independent conduct. The dukes of Britany and Burgundy were of a more formidable character, and might rather be ranked among foreign powers, than privileged subjects. The princes too of the royal blood, who, during the late reign, had learned to partake or contend for the management, were ill-inclined towards Charles VII. himself jealous, from old recollections, of their ascendancy. They saw that the constitution was verging rapidly towards an absolute monarchy, from the direction of which they would studiously be excluded. This apprehension gave rise to several attempts at rebellion during the reign of Charles VII. and to the war, commonly entitled, for the Public Weal (*du bien public*), under Louis XI. Among the pretences alledged by the revolvers in

\* Villaret, t. xv. p. 327.

each of these, the injuries of the people were not forgotten;\* but from the people they received small support. Weary of civil dissension, and anxious for a strong government to secure them from depredation, the French had no inducement to entrust even their real grievances to a few malecontent princes, whose regard for the common good they had much reason to distrust. Every circumstance favoured Charles VII. and his son in the attainment of arbitrary power. The country was pillaged by military ruffians. Some of these had been led by the dauphin to a war in Germany, but the remainder still infested the high roads and villages. Charles established his companies of ordinance, the basis of the French regular army, in order to protect the country from such depredators. They consisted of about nine thousand soldiers, all cavalry, of whom fifteen hundred were heavy-armed; a force not very considerable, but the first, except mere body-guards, which had been raised in any part of Europe, as a national standing army.† These troops were paid out of the

\* The confederacy formed at Nevers in 1441, by the dukes of Orleans and Bourbon, with many other princes, made a variety of demands, all relating to the grievances which different classes of the state, or individuals among themselves, suffered under the administration of Charles. These may be found at length in Monstrelet, p. ii. f. 193; and are a curious document of the change which was then working in the French constitution. In his answer, the king claims the right, in urgent cases, of levying taxes without waiting for the consent of the States-general.

† Olivier de la Marche speaks very much in favour of the companies of ordonnance, as having repressed the plunderers,

produce of a permanent tax, called the *taille*; an innovation still more important than the former. But the present benefit cheating the people, now prone to submissive habits, little or no opposition was made; except in *Guienne*, the inhabitants of which had speedy reason to regret the mild government of England, and vainly endeavoured to return to its protection.\*

and restored internal police. *Collect. des Mémoires*, t. viii. p. 148. Amelgard pronounces a vehement philippic against them; but it is probable that his observation of the abuses they had fallen into was confined to the reign of Louis XI. *Notices des Manuscrits*, ubi supra.

\*The insurrection of *Guienne* in 1452, which for a few months restored that province to the English crown, is nowhere adequately accounted for, except in the curious memoirs of Amelgard, above mentioned. It proceeded solely from the arbitrary taxes imposed by Charles VII. in order to defray the expenses of his regular army. The people of *Bordeaux* complained of exactions not only contrary to their ancient privileges, but to the positive conditions of their capitulation. But the king was deaf to such remonstrances. The province of *Guienne*, he says, then perceived that it was meant to subject it to the same servitude as the rest of France, where the leeches of the state boldly maintain, as a fundamental maxim, that the king has a right to tax all his subjects, how and when he pleases; which is to advance, that, in France, no man has any thing that he can call his own, and that the king can take all at his pleasure; the proper condition of slaves, whose peculium enjoyed by their master's permission belongs to him, like their persons, and may be taken away whenever he chuses. Thus situated, the people of *Guienne*, especially those of *Bordeaux*, alarmed themselves, and excited by some of the nobility, secretly sought about for means to regain their ancient freedom; and having still many connexions with persons of rank in England, they negotiated with them, &c. *Notices des Manuscrits*, p. 433. The same cause is assigned to this revolution by *Du Clecq*, also a contemporary writer, living in the

It was not long before the new despotism exhibited itself in its harshest character. Louis XI. 1461 son of Charles VII. who, during his father's reign, had been connected with the discontented princes, came to the throne greatly endowed with those virtues and vices, which conspires to the success of a king. Laborious vigilance in business, contempt of pomp, affability to inferiors, were his excellencies; qualities especially praiseworthy in an age characterized by idleness, love of pageantry, and insolence. To these virtues he added a perfect knowledge of all persons eminent for talents or influence in the countries with which he was connected; and a well-judged bounty, that thought no expense wasted to draw them into his service or interest. In the fifteenth century, this political art had hardly been known, except perhaps in Italy; the princes of Europe had contended with each other by arms, sometimes by treachery; but never with such complicated subtlety of intrigue. Of that insidious cunning, which has since been brought to perfection, Louis XI. may be deemed not absolutely the inventor, but the most eminent improver; and its success has led perhaps to too high an estimate of his abilities. Like most bad men, he sometimes fell into his own snare, and was betrayed by his confidential ministers, because his confidence was generally reposed in the wicked. And his dissimulation was so

dominions of Burgundy. *Collection des Mémoires*, t. ix. p. 400. Villaret has not known, or not chosen to know, any thing of the matter.

notorious, his tyranny so oppressive, that he was naturally surrounded by enemies, and had occasion for all his craft to elude those rebellions and confederacies which might perhaps not have been raised against a more upright sovereign. At one time the monarchy was on the point of sinking before a combination, which would have ended in dismembering France. This was the league denominated of the Public Weal, in which all the princes and great vassals of the French crown were concerned ; the dukes  
1464 of Britany, Burgundy, Alençon, Bourbon, the count of Dunois, so renowned for his valour in the English wars, the families of Foix and Armagnac ; and, at the head of all, Charles duke of Berry, the king's brother and presumptive heir. So unanimous a combination was not formed without strong provocation from the king, or at least without weighty grounds for distrusting his intentions ; but the more remote cause of this confederacy, as of those which had been raised against Charles VII. was the critical position of the feudal aristocracy from the increasing power of the crown. This war of the Public Weal was in fact a struggle to preserve their independence ; and from the weak character of the duke of Berry, whom they would, if successful, have placed upon the throne, it is possible that France might have been in a manner partitioned among them, in the event of their success, or at least that Burgundy and Britany would have thrown off the sovereignty that galled them.

The strength of the confederates in this war much



exceeded that of the king; but it was not judiciously employed, and after an indecisive battle at Montlhéry, they failed in the great object of reducing Paris, which would have obliged Louis to fly from his dominions. It was his policy to promise every thing, in trust that fortune would afford some opening to repair his losses, and give scope to his superior prudence. Accordingly by the treaty of Conflans, he not only surrendered afresh the towns upon the Somme, which he had lately redeemed from the duke of Burgundy, but invested his brother with the duchy of Normandy as his apanage.

The term apanage denotes the provision made for the younger children of a king of France. This always consisted of lands and feudal superiorities, held of the crown by the tenure of peerage. It is evident, that this usage, as it produced a new class of powerful feudataries, was hostile to the interests and policy of the sovereign, and retarded the subjugation of the ancient aristocracy. But an usage cœval with the monarchy was not to be abrogated, and the scarcity of money rendered it impossible to provide for the younger branches of the royal family by any other means. It was restrained, however, as far as circumstances would permit. Philip IV. declared that the county of Poitiers, bestowed by him on his son, should revert to the crown on the extinction of male heirs. But this, though an important precedent, was not, as has often been asserted, a general law. Charles V. limited the apanages of his own sons to twelve thousand livres of annual

value in land. By means of their apanages, and through the operation of the Salic law, which made their inheritance of the crown a less remote contingency, the princes of the blood royal in France were at all times (for the remark is applicable long after Louis XI.) a distinct and formidable class of men, whose influence was always disadvantageous to the reigning monarch, and, in general, to the people.

No apanage had ever been granted in France so enormous as the duchy of Normandy. One third of the whole national revenue, it is declared, was derived from that rich province. Louis could not therefore sit down under such terms, as, with his usual insincerity, he had accepted at Conflans. In a very short time he attacked Normandy, and easily compelled his brother to take refuge in Britany; nor were his enemies ever able to procure the restitution of Charles's apanage. During the rest of his reign, Louis had powerful coalitions to withstand; but his prudence and compliance with circumstances, joined to some mixture of good fortune, brought him safely through his perils. The duke of Britany, a prince of moderate talents, was unable to make any formidable impression, though generally leagued with the enemies of the king. The less powerful vassals were successively crushed by Louis with decisive vigour: the duchy of Alençon was confiscated; the count of Armagnac was assassinated; the duke of Nemours, and the constable of St. Pol, a politician as treacherous as Louis, who had long betrayed both him and the duke of Burgundy, suffered upon

the scaffold. The king's brother, Charles, after disquieting him for many years, died suddenly in Guienne, which had finally been granted as his apanage, with strong suspicions of having been poisoned by the king's contrivance. Edward IV. was too dissipated and too indolent to be fond of war; and, though he once entered France with an army more considerable than could have been expected after such civil bloodshed as England had witnessed, he was induced, by the stipulation of a large pension, to give up the enterprize\*. So terrible was still in France the apprehension of an English war, that Louis prided himself upon no part of his policy so much as the warding this blow. Edward shewed a desire to visit Paris; but the king gave him no invitation, lest, he said, his brother should find some handsome women there, who might tempt him to return in a different manner. Hastings, Howard, and others of Edward's ministers, were secured by bribes in the interests of Louis, which the first of these did not scruple to receive at the same time from the duke of Burgundy.†

\* The army of Edward consisted of 1,500 men at arms, and 14,000 archers; the whole very well-appointed. Comines, t. xi. p. 232. There seems to have been a great expectation of what the English would do, and great fears entertained by Louis, who grudged no expense to get rid of them.

† Comines, l. vi. c. 2. Hastings had the mean cunning to refuse to give his receipt for the pension he took from Louis XI. "This present, he said to the king's agent, comes from your master's good pleasure, and not at my request; and if you

This was the most powerful enemy whom the craft of Louis had to counteract. In the last days of the feudal system, when the house of Capet had almost atchieved the subjugation of those proud vassals among whom it had been originally numbered, a new antagonist sprung up to dispute the field against the crown. John, king of France, granted the duchy of Burgundy, by way of apanage, to his third son. Philip. By his marriage with Margaret, heiress of Louis, count of Flanders, Philip acquired that province, Artois, the *county* of Burgundy, (or Franche-comté,) and the Nivernois. Philip the Good, his grandson, who carried the prosperity of this family to its height, possessed himself, by various titles, of the several other provinces which compose the Netherlands. These were fiefs of the empire, but latterly not much dependent upon it, and alienated by their owners without its consent. At the peace of Arras, the districts of Macon and Auxerre were absolutely ceded to Philip, and great part of Picardy conditionally made over to him, redeemable on the payment of four hundred thousand crowns.\* These

mean I should receive it, you may put it here into my sleeve, but you shall have no discharge from me; for I will not have it said, that the Great Chamberlain of England is a pensioner of the king of France, nor have my name appear in the books of the *Chambre des Comptes*." Ibid.

\*The duke of Burgundy was personally excused from all homage and service to Charles VII.; but, if either died, it was to be paid by the heir, or to the heir. Accordingly, on Charles's death, Philip did homage to Louis. This exemption can hardly therefore have been inserted to gratify the pride of Philip, as historians suppose. Is it not probable, that, during his resent-

extensive, though not compact dominions, were abundant in population and wealth, fertile in corn, wine, and salt, and full of commercial activity. Thirty years of peace which followed the treaty of Arras, with a mild and free government, raised the subjects of Burgundy to a degree of prosperity, quite unparalleled in those times of disorder; and this was displayed in sumptuousness of dress and feasting. The court of Philip and of his son Charles was distinguished for its pomp and riches, for pageants and tournaments; the trappings of chivalry, perhaps without its spirit; for the military character of Burgundy had been impaired by long tranquility.\*

ment against Charles, he might have made some vow never to do him homage; which this reservation in the treaty was intended to preserve?

It is remarkable that Villaret says, the duke of Burgundy was positively excused by the 25th article of the peace of Arras from doing homage to Charles, or *his successors kings of France*. t. xvi. p. 404. For this assertion too he seems to quote the Trésor des Chartes, where probably the original treaty is preserved. Nevertheless, it appears otherwise, as published by Monstrelet at full length, who could have no motive to falsify it; and Philip's conduct in doing homage to Louis is hardly compatible with Villaret's assertion. Daniel copies Monstrelet without any observation. In the same treaty, Philip is entitled, Duke, by the grace of God; which was reckoned a mark of independence, and not usually permitted to a vassal.

\* P. de Comines, l. i. c. 2 and 3.; l. v. c. 9. Du Clercq, in Collection des Mémoires, t. ix. p. 389. In the investiture granted by John to the first Philip of Burgundy, a reservation is made, that the royal taxes shall be levied throughout that apanage. But during the long hostility between the kingdom and duchy, this could not have been enforced; and by the treaty of Arras, Charles surrendered all right to tax the duke's dominions. Monstrelet, f. 114.

During the lives of Philip and Charles VII., each understood the other's rank, and their amity was little interrupted. But their successors, the most opposite of human kind in character, had one common quality, ambition, to render their antipathy more powerful. Louis was eminently timid and suspicious in policy; Charles intrepid beyond all men, and blindly presumptuous: Louis stooped to any humiliation to reach his aim; Charles was too haughty to seek the fairest means of strengthening his party. An alliance of his daughter with the duke of Guienne, brother of Louis, was what the malcontent French princes most desired, and the king most dreaded; but Charles, either averse to any French connexion, or willing to keep his daughter's suitors in dependence, would never directly accede to that, or any other proposition for her marriage. On Philip's death, in 1467, he inherited a great treasure, which he soon wasted in the prosecution of his schemes. These were so numerous and vast, that he had not time to live, says Comines, to complete them, nor would one half of Europe have contented him. It was his intention to assume the title of king; and the emperor Frederic III. was at one time actually on his road to confer this dignity, when some suspicion caused him to retire; and the project was never renewed.\* It is evident that if Charles's capacity

\* Garnier, t. xviii. p. 62. It is observable, that Comines says not a word of this; for which Garnier seems to quote Belcarius, a writer of the sixteenth age. But even Philip, when Morvilliers, Louis's chancellor, used menaces towards him,

had born any proportion to his pride and courage, or if a prince less politic than Louis XI. had been his contemporary in France, the province of Burgundy must have been lost to the monarchy. For several years these great rivals were engaged, sometimes in endeavours to over-reach each other; but Charles, though not much more scrupulous, was far less an adept in these mysteries of politics than the king.

Notwithstanding the power of Burgundy, there were some disadvantages in its situation. It presented (I speak of all Charles's dominions under the common name, Burgundy) a very exposed frontier on the side of Germany and Swisserland, as well as France; and Louis exerted a considerable influence over the adjacent princes of the empire, as well as the united cantons. The people of Liege, a very populous city, had for a long time been continually rebelling against their bishops, who were the allies of Burgundy; Louis was of course not backward to foment their insurrections; which sometimes gave the dukes a good deal of trouble. The Flemings, and especially the people of Ghent, had been during a century noted for their republican spirit and contumacious defiance of their sovereign. Liberty never wore a more unamiable countenance than among these burghers; who abused the strength she gave them by cruelty and insolence. Ghent, when Froissart wrote, about the year 1400, was one of the

interrupted the orator with these words: *Je veux que chacun scache que, si j'eusse voulu, je fusse roi.* Villaret, t. xvii. p. 44.

strongest cities in Europe, and would have required an army of two hundred thousand men, to besiege it on every side, so as to shut up all access by the Lys and Scheldt. It contained eighty thousand men of age to bear arms;\* a calculation which, although, as I presume, much exaggerated, is evidence of great actual populousness. Such a city was absolutely impregnable, at a time when artillery was very imperfect both in its construction and management. Hence, though the citizens of Ghent were generally beaten in the field with great slaughter, they obtained tolerable terms from their masters, who knew the danger of forcing them to a desperate defence.

No taxes were raised in Flanders; or indeed throughout the dominions of Burgundy, without consent of the three estates. In the time of Philip, not a great deal of money was levied upon the people; but Charles obtained every year a pretty large subsidy, which he expended in the hire of Italian and English mercenaries.† An almost uninterrupted

\* Froissart, part ii. c. 67.

† Comines, l. iv. c. 13. It was very reluctantly that the Flemings granted any money. Philip once begged for a tax on salt, promising never to ask any thing more; but the people of Ghent, and, in imitation of them, the whole county refused it. Du Clercq, p. 389. Upon his pretence of taking the cross, they granted him a subsidy, though less than he had requested, on condition that it should not be levied, if the crusade did not take place, which put an end to the attempt. The states knew well, that the duke would employ any money they gave him in keeping up a body of gens d'armes, like his neighbour, the king of France; and, though the want of such a force exposed their country to pillage, they were too good patriots to



success had attended his enterprizes for a length of time, and rendered his disposition still more overweening. His first failure was before Nuz, a little town near Cologne, the possession of which would have made him nearly master of the whole course of the Rhine, for he had already obtained the landgraviate of Alsace. Though compelled to raise this siege, he succeeded in occupying, next year, the duchy of Lorraine. But his overthrow was reserved for an enemy whom he despised, and whom none could have thought equal to the contest. The Swiss had given him some slight provocation, for which they were ready to atone: but Charles was unused to forbear; and perhaps Swisserland came within his projects of conquest. At Granson in the Pays de Vaud, he was entirely routed with more disgrace than slaughter.\* But, having reassembled his troops, and met

place the means of enslaving it in the hands of their sovereign. Grand doute faisoient les sujets, et pour plusieurs raisons, de se mettre en cette sujétion, ou ils voyoient le royaume de France, a cause de ses gens d'armes. À la verité, leur grand doute n'estoit pas sans cause; car quand il se trouva cinq cens hommes d'armes, la volonté luy vint d'en avoir plus, et de plus hardiment entreprendre contre tous ses voisins. Comines, l. iii. c. 4. 9.

Du Clercq, a contemporary writer of very good authority, mentioning the story of a certain widow who had remarried the day after her husband's death, says that she was in some degree excusable, because it was the practice of the duke and his officers to force rich widows into marrying their soldiers or other servants. t. ix. p. 418.

\* A famous diamond, belonging to Charles of Burgundy, was taken in the plunder of his tent by the Swiss at Granson. After several changes of owners, most of whom were ignorant

the confederate army of Swiss and Germans at Morat near Berne, he was again defeated with vast loss. On this day the power of Burgundy was dissipated: deserted by his allies, betrayed by his mercenaries, he set his life upon another cast at Nancy, desperately giving battle to the duke of Lorraine with  
1477 a small dispirited army, and perished in the engagement.

Now was the moment, when Louis, who had held back while his enemy was breaking his force against the rocks of Swisserland, came to gather a harvest which his labour had not reaped. Charles left an only daughter, undoubted heiress of Flanders and Artois, as well as of his dominions out of France; but whose right of succession to the duchy of Burgundy was more questionable. Originally, the great fiefs of the crown descended to females; and this was the case with respect to the two first mentioned. But John had granted Burgundy to his son Philip by way of apanage; and it was contended, that apanages reverted to the crown in default of male heirs. In the form of Philip's investiture, the duchy was granted to him and his lawful heirs, without designation of sex. The construction therefore must be left to the established course of law. This, however, was by no means acknowledged by Mary, Charles's daughter, who maintained; both that no general law restricted apanages to male heirs; and

of its value, it became the first jewel in the French crown. Garnier, t. xviii. p. 361.

that Burgundy had always been considered as a feminine fief, John himself having possessed it, not by reversion as king, (for descendants of the first dukes were then living,) but by inheritance derived through females.\* Such was this question of succession between Louis XI. and Mary of Burgundy, upon the merits of whose pretensions I will not pretend altogether to decide; but shall only observe, that if Charles had conceived his daughter to be excluded from this part of his inheritance, he would probably at Conflans or Peronne, where he treated upon the vantage-ground, have attempted at least to obtain a renunciation of Louis's claim.

There was one obvious mode of preventing all further contest, and of aggrandizing the French monarchy far more than by the reunion of Burgundy—this was the marriage of Mary with the dauphin,

\* It is advanced with too much confidence by several French historians, either that the ordinances of Philip IV. and Charles V. constituted a general law against the descent of apanages to female heirs; or that this was a fundamental law of the monarchy. Du Clos, *Hist. de Louis XI.* t. ii. p. 252; Garnier, *Hist. de France*, t. xviii. p. 258. The latter position is refuted by frequent instances of female succession; thus Artois had passed by a daughter of Louis le Male into the house of Burgundy. As to the above mentioned ordinances, the first applies only to the county of Poitiers; the second does not contain a syllable that relates to succession. (*Ordonnances des Rois*, t. vi. p. 54.) The doctrine of excluding female heirs was more consonant to the pretended Salic law, and the recent principles as to inalienability of domain, than to the analogy of feudal rules and precedents. M. Guillard, in his *Observations sur l'Histoire de Velly, Villaret, et Garnier*, has a judicious note on this subject. t. iii. p. 304.

which was ardently wished in France. Whatever obstacles might occur to this connexion, it was natural to expect on the opposite side: from Mary's repugnance to an infant husband, or from the jealousy which her subjects were likely to entertain, of being incorporated with a country worse governed than their own. The arts of Louis would have been well employed in smoothing these impediments.\* But he chose to seize upon as many towns as, in those critical circumstances, lay exposed to him, and stripped the young duchess of Artois and Franche Comté. Expectations of the marriage he sometimes held out, but, as it seems, without sincerity. Indeed he contrived irreconcilably to alienate Mary by a shameful perfidy, betraying the ministers whom she had entrusted upon a secret mission, to the people of Ghent, who put them to the torture, and afterwards to death, in the presence and amidst the tears and supplication of their mistress. Thus the French alliance becom-

\* Robertson, as well as some other moderns, have maintained, on the authority of Comines, that Louis XI. ought in policy to have married the young princess to the count of Angouleme, father of Francis I. a connexion which she would not have disliked. But certainly nothing could have been more adverse to the interests of the French monarchy than such a marriage, which would have put a new house of Burgundy at the head of those princes, whose confederacies had so often endangered the crown. Comines is one of the most judicious of historians; but his sincerity may be rather doubtful in the opinion above mentioned; for he wrote in the reign of Charles VIII. when the count of Angouleme was engaged in the same faction as himself.

ing odious in France, this princess married Maximilian of Austria, son of the emperor Frederick: a connexion which Louis strove to prevent, though it was impossible then to foresee that it was ordained to retard the growth of France, and to bias the fate of Europe during three hundred years. The war lasted till after the death of Mary, who left one son Philip, and one daughter Margaret. By a treaty of peace concluded at Arras, in 1477, it was agreed, that this daughter should become the dauphin's wife, with Franche Comté and Artois; which Louis held already, for her dowry, to be restored in case the marriage should not take effect. The homage of Flanders, and apellant jurisdiction of the parliament over it, were reserved to the crown.

Mean while Louis was lingering in disease and torments of mind, the retribution of fraud and tyranny. Two years before his death, he was struck with an apoplexy, from which he never wholly recovered. As he felt his disorder increasing, he shut himself up in a palace near Tours, to hide from the world the knowledge of his decline.\* His solitude was like that of Tiberius at Capreæ, full of terror and suspicion, and deep consciousness of universal hatred. All ranks, he well knew had their several

\* For Louis's illness and death, see Comines, l. vi. c. 7—12, and Garnier, t. xix. p. 112, &c. Plessis, his last residence, about an English mile from Tours, is now a dilapidated farmhouse, and can never have been a very large building. The vestiges of royalty about it are few; but the principal apartments have been destroyed, either in the course of ages, or at the revolution.

injuries to remember : the clergy, whose liberties he had sacrificed to the see of Rome, by revoking the Pragmatic Sanction of Charles VII. ; the princes, whose blood he had poured upon the scaffolds ; the parliament, whose course of justice he had turned aside ; the commons, who groaned under his extortion, and were plundered by his soldiery.\* The palace, fenced with portcullises and spikes of iron, was guarded by archers and cross-bow men, who shot at any that approached by night. Few entered this den ; but to them he showed himself in a magnificent apparel, contrary to his former custom, hoping thus to disguise the change of his meagre body. He distrusted his friends and kindred, his daughter and his son, the last of whom he had not suffered even to read or write, lest he should too soon become his rival. No man ever so much feared death, to avert which he stooped to every meanness and sought every remedy. His physician had sworn, that if he were dismissed, the king would not survive a week ; and Louis, enfeebled by sickness and terror, bore the rudest usage from this man, and endeavoured to secure his services by vast rewards. Always credulous in relics, though seldom restrained by supersti-

\* See a remarkable chapter in Philip de Comines, l. iv. c. 19. wherein he tells us that Charles VI. had never raised more than 1,800,000 francs a year in taxes ; but Louis XI. at the time of his death raised 4,700,000, exclusive of some military impositions ; *et surement c'estoit compassion de voir et scavoir la pauvreté du peuple*. In this chapter he declares his opinion, that no king can justly levy money on his subjects without their consent, and repels all common arguments to the contrary.

tion from any crime,\* he eagerly bought up treasures of this sort, and even procured a Calabrian hermit of noted sanctity, to journey as far as Tours in order to restore his health. Philip de Comines, who attended him during this infirmity, draws a parallel between the torments he then endured, and those he had formerly inflicted on others. Indeed the whole of his life was vexation of spirit. "I have known him, says Comines, and been his servant in the flower of his age, and in the time of his greatest prosperity; but never did I see him without uneasiness and care. Of all amusements he loved only the chace, and hawking in its season. And in this he had almost as much uneasiness as pleasure; for he rode hard and got up early, and sometimes went a great way, and regarded no weather: so that he used to return very weary, and almost ever in wrath with some one. I think that from his childhood he never had any respite of labour and trouble to his death. And I am certain that if all the happy days of his life, in which he had more enjoyment than uneasiness, were numbered, they would be found very

\* An exception to this was when he swore by the cross of St. Lo, after which he feared to violate his oath. The constable of St. Pol, whom Louis invited with many assurances to court, bethought himself of requiring this oath, before he trusted his promises, which the king refused; and St. Pol prudently staid away. Garn. t. xviii. p. 72. Some report, that he had a similar respect for a leaden image of the Virgin, which he wore in his hat. "A perjured prince a leaden saint revere."

few; and at least that they would be twenty of sorrow for every one of pleasure.”\*

Charles VIII. was about thirteen years old, when he succeeded his father Louis. Though the law of France fixed the majority of her kings at that age, yet it seems not to have been strictly regarded on this occasion; and at least Charles was a  
1483 minor by nature, if not by law. A contest arose therefore for the regency, which Louis had entrusted to his daughter Anne, wife of the lord de Beaujeu, one of the Bourbon family. The duke of Orleans, afterwards Louis XII., claimed it as presumptive heir of the crown, and was seconded by most of the princes. Anne, however, maintained her ground, and ruled France for several years in her brother's name with singular spirit and address, in spite of the rebellions which the Orleans party raised up against her. These were supported by the duke of Britany, the last of the great vassals of the crown, whose daughter, as he had no male issue, was the object of as many suitors as Mary of Burgundy.

The duchy of Britany was peculiarly circumstanced. The inhabitants, whether sprung from the ancient republicans of Armorica, or, as some have thought, from an emigration of our islanders during the Saxon invasion, had never belonged to the body of the French monarchy. They were governed by

\* Comines, l. vi. c. 13. The passage in the text is put together out of several parts of this chapter.



their own princes and laws; though tributary, perhaps, as the weaker to the stronger, to the Merovingian kings.\* In the ninth century, the dukes of Britany did homage to Charles the Bald, the right of which was transferred afterwards to the dukes of Normandy. This formality, at that time no token of real subjection, led to consequences beyond the views of either party. For when the feudal chains, that had hung so loosely upon the shoulders of the great vassals, began to be straightened by the dexterity of the court, Britany found itself drawn among the rest to the same centre. The old privileges of independence were treated as usurpation; the dukes were menaced with confiscation of their fief, their right of coining money disputed, their jurisdiction impaired by appeals to the parliament of Paris.—However, they stood boldly upon their right, and always refused to pay *liege-homage*, which implied an obligation of service to the lord, in contradistinction to *simple homage*, which was a mere symbol of feudal dependence.\*

\* Gregory of Tours says, that the Bretons were subject to France from the death of Clovis, and that their chiefs were styled counts, not kings. l. iv. c. 4. However, it seems clear from Nigellus, a writer of the life of Louis the Debonair, that they were almost independent in his time. There was even a march of the Britannic frontier, which separated it from France; and they had a king of their own. It is hinted, indeed, that they had been formerly subject; for after a victory of Louis over them, Nigellus says, *Imperio sociat perdita regna dia*. In the next reign of Charles the Bald, Hincmar tells us, *regnum undique a Paganis, et falsis Christianis, scilicet Britonibus, est circumscriptum*. Epist. 18. See too *Capitularia Car. Calvi*. A. D. 877. tit. 23.

† Villaret, t. xii. p. 82. t. xv. p. 199.

About the time that Edward III. made pretension to the crown of France, a controversy somewhat resembling it arose in the duchy of Britany, between the families of Blois and Montfort. This led to a long and obstinate war, connected all along, as a sort of underplot, with the great drama of France and England. At last, Montfort, Edward's ally, by the defeat and death of his antagonist, obtained the duchy, of which Charles V. soon after gave him the investiture. This prince and his family were generally inclined to English connexions; but the Bretons would seldom permit them to be effectual. Two cardinal feelings guided the conduct of this brave and faithful people; the one, an attachment to the French nation and monarchy in opposition to foreign enemies; the other, a zeal for their own privileges, and the family of Montfort, in opposition to the encroachments of the crown. In Francis II. the present duke, the male line of that family was about to be extinguished. His daughter Anne was naturally the object of many suitors, among whom were particularly distinguished the duke of Orleans, who seems to have been preferred by herself; the lord of Albret, a member of the Gascon family of Foix, favoured by the Breton nobility, as most likely to preserve the peace and liberties of their country, but whose age rendered him not very acceptable to a youthful princess; and Maximilian, king of the Romans. Britany was rent by factions, and overrun by the armies of the regent of France, who did not lose this opportunity of interfering with its domestic troubles, and of per-

secuting her private enemy, the duke of Orleans. Anne of Britany, upon her father's death, finding no other means of escaping the addresses of Albret, was married, by proxy, to Maximilian. This however aggravated the evils of the country, since France was resolved at all events to break off 1489 so dangerous a connexion. And as Maximilian himself was unable or took not sufficient pains to relieve his betrothed wife from her embarrassments, she was ultimately compelled to accept the hand of Charles VIII. He had long been engaged by the treaty of Arras, to marry the daughter of Maximilian, and that princess was educated at the French court. But this engagement had not prevented several years of hostilities, and continual intrigues with the towns of Flanders against Maximilian. The double injury which the latter sustained in the marriage of Charles with the heiress of Britany seemed likely to excite a protracted contest; but the king of France, who had other objects in view, and perhaps was conscious that he had not acted a fair part soon 1492 came to an accommodation, by which he restored Artois and Franche Comté.

France was now consolidated into a great kingdom; the feudal system was at an end. The spirit of Philip Augustus, the paternal wisdom of St. Louis, the policy of Philip the Fair, had laid the foundations of a powerful monarchy, which, neither the arms of England, nor seditions of Paris, nor rebellions of the princes were able to shake. Besides the original fiefs of the French crown, it had acquir-

ed two countries beyond the Rhone, which properly depended only upon the empire, Dauphiné, under Philip of Valois, by the bequest of Humbert, 1481 the last of its princes; and Provence, under Louis XI. by that of Charles of Anjou.\* Thus

\*The country now called Dauphiné formed part of the kingdom of Arles or Provence, bequeathed by Rodolph III. to the emperor Conrad II. But the dominion of the empire over these new acquisitions being little more than nominal, a few of the chief nobility converted their respective fiefs into independent principalities. One of these was the lord, or dauphin of Vienne, whose family became ultimately masters of the whole province. Humbert, the last of these, made John, son of Philip of Valois, his heir, on condition that Dauphiné should be constantly preserved as a separate possession, not incorporated with the kingdom of France. This bequest was confirmed by the emperor Charles IV. whose supremacy over the province was thus recognized by the kings of France, though it soon came to be altogether disregarded.

Provence, like Dauphiné, was changed from a feudal dependency to a sovereignty, in the weakness and dissolution of the kingdom, of Arles, about the early part of the eleventh century. By the marriage of Douce, heiress of the first line of sovereign counts, with Raymond Berenger, count of Barcelona, in 1112, it passed into that distinguished family. In 1167, it was occupied or usurped by Alfonso II. king of Aragon, a relation, but not heir, of the house of Berenger. Alfonso bequeathed Provence to his second son, of the same name, from whom it descended to Raymond Berenger IV. This count dying without male issue in 1245, his youngest daughter Beatrice took possession by virtue of her father's testament. But this succession being disputed by other claimants, and especially by Louis IX. who had married her elder sister, she compromised differences by marrying Charles of Anjou, the king's brother. The family of Anjou reigned in Provence, as well as in Naples, till the death of Joan in 1382, who having no children, adopted Louis duke of Anjou, brother of Charles V. as her successor. This second

having conquered herself, if I may use the phrase, and no longer apprehensive of any foreign enemy, France was prepared, under a monarch flushed with sanguine ambition, to carry her arms into other countries, and to contest the prize of glory and power upon the ample theatre of Europe.\*

Angevin line ended in 1481 by the death of Charles III. though Renier duke of Lorraine, who was descended though a female, had a claim which it does not seem easy to repel by argument. It was very easy however for Louis XI. to whom Charles III. had bequeathed his rights, to repel it by force, and accordingly he took possession of Provence, which was permanently united to the crown by letters patent of Charles VIII. in 1486.\*

\* The principal authority, exclusive of original writers, on which I have relied for this chapter, is the History of France by Velly, Villaret. and Garnier; a work which, notwithstanding several defects, has absolutely superseded those of Mezeray and Daniel. The part of the Abbé Velly comes down to the middle of the eighth volume, (12mo edition) and of the reign of Philip de Valois. His continuator Villaret was interrupted by death in the seventeenth volume, and in the reign of Louis XI. In my references to this history, which for common facts I have not thought it necessary to make, I have merely named the author of the particular volume which I quote. This has made the above explanation convenient, as the reader might imagine that I referred to three distinct works. Of these three historians, Garnier, the last, is the most judicious, and, I believe, the most accurate. His prolixity, though a material defect, and one which has occasioned the work itself to become an immeasurable undertaking, which could never be completed on the same scale, is chiefly occasioned by too great a regard to details, and is more tolerable than a similar fault in Villaret, proceeding from a love of idle declamation and sentiment. Villaret, however, is not without merits. He embraces, perhaps more fully than his predecessor Velly, those collateral

\* *Art de vérifier les Dates*, t. ii. p. 445.—Garnier, t. xix. p. 57, 474.

## CHAPTER II.

ON THE FEUDAL SYSTEM, ESPECIALLY IN FRANCE.

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### PART I.

*State of ancient Germany—Effects of the Conquest of Gaul by the Franks—Tenures of Land—Distinction of Laws—Constitution of the ancient Frank Monarchy—Gradual Establishment of Feudal Tenures—Principles of a Feudal Relation—Ceremonies of Homage and Investiture—Military Service—Feudal Incidents of Relief, Aid, Wardship, &c.—Different species of Fiefs—Feudal Law-books.*

GERMANY, in the age of Tacitus, was divided among a number of independent tribes, differing greatly in population and importance. Their country, overspread with forest and morasses, afforded

branches of history which an enlightened reader requires almost in preference to civil transactions, the laws, manners, literature, and in general the whole domestic records of a nation. These subjects are not always well treated; but the book itself, to which there is a remarkably full index, forms upon the whole a great repository of useful knowledge. Villaret had the advantage of official access to the French archives, by which he has no doubt enriched his history; but his references are indistinct, and his composition breathes an air of rapidity and want of exactness. Velly's characteristics are not very dissimilar. The style of both is exceedingly bad, as has been severely noticed, along with their other defects, by Gaillard, in *Observations sur l'Histoire de Velly, Villaret, et Garnier.* (4 vols. 12mo. Paris, 1806.)

little arable land, and the cultivation of that little was inconstant. Their occupations were principally the chase and pasturage; without cities, or even any contiguous dwellings. They had kings, elected out of particular families; and other chiefs, both for war and administration of justice, whom merit alone recommended to the public choice. But the power of each was greatly limited; and the decision of all leading questions, though subject to the previous deliberation of the chieftains, sprung from the free voice of a popular assembly.\* The principal men, however, of a German tribe, fully partook of that estimation which is always the reward of valour, and commonly of birth. They were surrounded by a cluster of youths, the most gallant and ambitious of the nation, their pride at home, their protection in the field; whose ambition was flattered, or gratitude conciliated, by such presents as a leader of barbarians could confer. These were the institutions of the people who overthrew the empire of Rome, congenial to the spirit of infant societies, and such as travellers have found among nations in the same stage of manners throughout the world. And, although in the lapse of four centuries between the ages of Tacitus and Clovis, some change may have

\* De minoribus rebus principes consultant, de majoribus omnes; ita tamen, ut ea quoque, quorum penes plebem arbitrium est, apud principes *pertractentur*. Tac. de Mor. Germ. c. xi. Acidalius and Grotius contend for *prætractentur*; which would be neater, but the same sense appears to be conveyed by the common reading.

been wrought by long intercourse with the Romans, yet the foundations of their political system were unshaken.

When these tribes from Germany and the neighbouring countries poured down upon the empire, and began to form permanent settlements, they made a partition of the lands in the conquered provinces between themselves and the original possessors. The Burgundians and Visigoths took two-thirds of their respective conquests, leaving the remainder to the Roman proprietor. Each Burgundian was quartered, under the gentle name of guest, upon one of the former tenants, whose reluctant hospitality confined him to the smaller portion of his estate.\* The Vandals in Africa, a more furious race of plunderers, seized all the best lands.† The Lombards of Italy took a third part of the produce. We cannot discover any mention of a similar arrangement in the laws or history of the Franks. It is, however, clear, that they occupied, by public allotment, or individual pillage, a great portion of the lands of France.

The estates possessed by the Franks, as their property, were termed *alodia*; a word, which is sometimes restricted to such as had descended by inheritance.‡ These were subject to no burthen ex-

\* Leg. Burgund. c. 54, 55.

† Procopius de Bello Vandal. I. i. c. 5.

‡ Alodial lands are commonly opposed to beneficiary or feudal; the former being strictly proprietary, while the latter depended upon a superior. In this sense the word is of continual recurrence in ancient histories, laws, and instruments.



cept that of public defence. They passed to all the children equally, or, in their failure, to the nearest kindred.\* But of these alodial possessions, there was a particular species, denominated Salic, from which females were expressly excluded. What these lands were, and what was the cause of the exclusion, has been much disputed. No solution seems more probable, than that the ancient lawgivers of the Salian Franks† prohibited females from inheriting the lands assigned to the nation upon its conquest of Gaul, both in compliance with their ancient usages, and in order to secure the military service of every proprietor. But lands subsequently acquired, by purchase or other means, though equally bound to the public defence, were relieved from the severity of this rule, and presumed not to belong to the class of Salic,‡ Hence, in the Ri-

It sometimes however bears the sense of *inheritance* ; and this seems to be its meaning in the famous 62d chapter of the Salic law ; de Alodis. Alodium interdum opponitur comparato, says Du Cange, in formulis veteribus. Hence, in the charters of the eleventh century, hereditary fiefs are frequently termed alodia. Recueil des Historiens de France, t. xi. preface. Vaissette, Hist. de Languedoc, t. ii. p. 109.

\* Leg. Salicæ, c. 62.

† The Salic laws appear to have been framed by a Christian prince, and after the conquest of Gaul. They are therefore not older than Clovis. Nor can they be much later, since they were altered by one of his sons.

‡ By the German customs, women, though treated with much respect and delicacy, were not endowed at their marriage. Dotem non uxor marito, sed maritus uxori confert. Tacitus, c. 18. A similar principle might debar them of inheritance in fixed possessions. Certain it is, that the exclusion

puary law, the code of a tribe of Franks settled upon the banks of the Rhine, and differing rather in words than in substance from the Salic law, which it serves to illustrate, it is said, that a woman cannot inherit her grandfather's estate, (*hæreditas aviatica*,) distinguishing such family property from what the father might have acquired.\* And Marculfus uses expressions to the same effect. There existed, however, a right of setting aside the law, and admitting females to succession by testament. In the code too of the Burgundians, the lands of partition (*sortes Burgundionum*) were restricted to male heirs.† But the Visigoths admitted women on equal terms to the whole inheritance.

A controversy has been maintained in France, as to the condition of the Romans, or rather, the provincial inhabitants of Gaul, after the invasion of

of females was very common among the Teutonic nations. We find it in the laws of the Thuringians and of the Saxons; both ancient codes, though not free from interpolation. Leibnitz, *Scriptores Rerum Brunswicensium*, t. i. p. 81 and 83. But this usage was repugnant to the principles of Roman law, which the Franks found prevailing in their new country, and to the natural feeling which leads a man to prefer his own descendants to collateral heirs. One of the precedents in Marculfus, (1, ii. form. 12.) calls the exclusion of females, *diuturna et impia consuetudo*. In another, a father addresses his daughter; *Omnibus non habetur incognitum, quod, sicut lex Salica continet, de rebus meis, quod mihi ex alode parentum meorum obvenit, apud germanos tuos filios meos minime in hæreditate succedere poteris*. *Formulæ Marculfo adjectæ*, 49. These precedents are supposed to have been compiled about the latter end of the seventh century.

\* C. 56.

† Leg. Burgund. c. 78.

Clovis. But neither those who have considered the Franks as barbarian conquerors, enslaving the former possessors, nor the Abbé du Bos, in whose theory they appear as allies and friendly inmates, are warranted by historical facts. On the one hand, we find the Romans not only possessed of property, and governed by their own laws, but admitted to the royal favour, and the highest offices;\* while the bishops and clergy, who were generally of that nation,† grew up continually in popular estimation, in riches, and in temporal sway. Yet it is undeniable, that a marked line was drawn at the outset between the conquerors and the conquered. Though one class of Romans retained estates of their own, yet there was another, called tributary, who seem to have cultivated those of the Franks, and were

\* Daniel conjectures, that Clotaire I. was the first who admitted Romans into the army, which had previously been composed of Franks. From this time we find many in high military command. (*Hist. de la Milice Française*, t. i. p. 11.) It seems by a passage in Gregory of Tours, by Du Bos, (t. iii. p. 547.) that some Romans affected the barbarian character, by letting their hair grow. If this were generally permitted, it would be a stronger evidence of approximation between the two races, than any that Du Bos has adduced. Montesquieu certainly takes it for granted that a Roman might change his law, and thus become, to all material intents, a Frank. (*Esprit des Loix*. l. xxviii. c. 4.) But the passage on which he relies is read differently in the manuscripts.

† Some bishops, if we may judge by their barbarous names, and other circumstances, were not Romans. See, for instance, Gregory of Tours, l. vi. c. 9. But no distinction was made among them on this account. The composition for the murder of a bishop was nine hundred solidi; for that of a priest, six hundred of the same coin. *Leges Salicæ*, c. 58.

scarcely raised above the condition of predial servitude. But no distinction can be more unequivocal, than that which was established between the two nations, in the *weregild* or composition for homicide. Capital punishment for murder was contrary to the spirit of the Franks, who, like most barbarous nations, would have thought the loss of one citizen ill repaired by that of another. The *weregild* was paid to the relations of the slain, according to a legal rate. This was fixed by the Salic law at six hundred *solidi* for an Antrustion of the king; at three hundred for a Roman *conviva regis* (meaning a man of sufficient rank to be admitted to the royal table;) at two hundred for a common Frank; at one hundred for a Roman possessor of lands; and at forty-five for a tributary, or cultivator of another's property. In Burgundy, where religion and length of settlement had introduced different ideas, murder was punished with death. But other personal injuries were compensated, as among the Franks, by a fine, graduated according to the rank and nation of the agrieved party.\*

\* *Leges Salicæ*, c. 43. *Leges Burgundionum*, tit. 2. Murder and robbery were made capital by Childebert, king of Paris; but *Francus* was to be sent for trial in the royal court, *debilior persona in loco pendatur*. Baluz. t. i. p. 17. I am inclined to think, that the word *Francus* does not absolutely refer to the nation of the party; but rather to his rank, as opposed to *debilior persona*; and consequently, that it had already acquired the sense of *freeman*, or *free born* (*ingenuus*), which is perhaps its strict meaning. Du Cange, *voc. Francus*, quotes the passage in this sense.

The barbarous conquerors of Gaul and Italy were guided by notions very different from those of Rome, who had imposed her own laws upon all the subjects of her empire. Adhering in general to their ancient customs without desire of improvement, they left the former inhabitants in unmolested enjoyment of their civil institutions. The Frank was judged by the Salic or the Ripuary code; the Gaul followed that of Theodosius.\* This grand distinction of Roman and barbarian, according to the law which each followed was common to the Frank, Burgundian, and Lombard kingdoms. But the Ostrogoths, whose settlement in the empire and advance in civility of manners were earlier, inclined to desert their old usages, and adopt the Roman jurisprudence.† The laws of the Visigoths too were compiled by bishops upon a Roman foundation, and designed as an uniform code, by which both nations should be governed.‡ The name of Gaul or Roman was not entirely lost in that of Frenchman, nor had the separation of their laws ceased, even in the provinces north of the Loire, till after the time of Charlemagne.§ Ulti-

\* *Inter Romanos negotia causarum Romanis legibus præcipimus terminari. Edict. Clotair. I. circ. 560 Baluz. Capitul. t. i. p. 7.*

† *Giannone, I. iii. c. 2.*

‡ *Hist. de Languedoc, t. i. p. 242. Heineccius, Hist. Juris German. c. i. s. 15.*

§ Suger, in his life of Louis VI., uses the expression, *lex Salica*. (*Recueil des Historiens, t. xii. p. 24*) and I have some recollection of having met with the like words in other writings of as modern a date. But I am not convinced that the original Salic code was meant by this phrase, which may have been

mately, however, the feudal customs of succession, which depended upon principles quite remote from those of the civil law, and the rights of territorial justice which the barons came to possess, contributed to extirpate the Roman jurisprudence in that part of France. But in the south, from whatever cause, it survived the revolutions of the middle ages; and thus arose a leading division of that kingdom into *pays coutumiers* and *pays du droit écrit*; the former regulated by a vast variety of ancient usages, the latter by the civil law.\*

applied to the local feudal customs. The capitularies of Charlemagne are frequently termed *lex Salica*. Many of these are copied from the Theodosian code.

\* This division is very ancient, being found in the edict to Pistes, under Charles the Bald, in 864; where we read, in *illis regionibus, quæ legem Romanam sequuntur*. (*Recueil des Historiens*, t. vii. p. 664.) Montesquieu thinks, that the Roman law fell into disuse in the north of France on account of the superior advantages, particularly in point of composition for offences, annexed to the Salic law; while that of the Visigoths being more equal, the Romans under their government had no inducement to quit their own code. (*Esprit des Loix*, l. xxviii. c. 4.) But it does not appear that the Visigoths had any peculiar code of laws till after their expulsion from the kingdom of Toulouse. They then retained only a small strip of territory in France, about Narbonne and Montpellier.

However, the distinction of men according to their laws was preserved for many centuries, both in France and Italy. A judicial proceeding of the year 918, published by the historians of Languedoc, (t. ii. Appendix, p. 56.) proves that the Roman, Gothic, and Salic codes were then kept perfectly separate, and that there were distinct judges for the three nations. The Gothic law is referred to as an existing authority in a charter of 1070. *Idem*, t. iii. p. 274. De Marca, *Marca Hispanica*, p. 1159. Every man, both in France, (*Hist. de*

The kingdom of Clovis was divided into a number of districts, each under the government of a count, a name familiar to Roman subjects, by which they rendered the *graf* of the Germans. The authority of this officer extended over all the inhabitants, as well Franks as natives. It was his duty to administer justice, to preserve tranquility, to collect the revenues, and to lead, when required, the free proprietors into the field.\* The title of a duke implied a higher dignity, and commonly gave authority over several counties.† These offices were originally conferred

Languedoc, t. ii. Append. p. 69.) and in Italy, seems to have had the right of chusing by what law he would be governed. Volumus, says Lothaire I 824, ut cunctus populus Romanus interrogetur, quali lege vult vivere, ut tali, quali professi fuerint vivere velle, vivant. Quod si offensionem contra eandem legem fecerint, eidem legi quam profitentur, subjacebunt. Women upon marriage usually changed their law, and adopted that of their husband, returning to their own in widowhood; but to this there are exceptions. Charters are found, as late as the end of the twelfth century, with the expression, qui professus sum lege Longobardicâ [aut] lege Salicâ [aut] lege Alemannorum vivere. But soon afterwards the distinctions were entirely lost, partly through the prevalence of the Roman law, and partly through the multitude of local statutes in the Italian cities Muratori, Antiquitates Italiæ. Dissertat. 22. Du Cange, v. Lex. Heineccius, Historia Juris Germanici, c. ii. s. 51.

\* Marculfi Formulæ, l. i. 32.

† Houard, the learned translator of Littleton, (Anciennes Loix des François, t. i. p. 6.) supposes these titles to have been applied indifferently. But the contrary is easily proved, and especially by a line of Fortunatus, quoted by Du Cange and others;

Qui modo dat Comitibus, det tibi jura Ducibus. The cause of M. Houard's error may perhaps be worth noticing. In the above cited form of Marculfus, a *precedent* (in law language)

during pleasure; but the claim of a son to succeed his father would often be found too plausible or too formidable to be rejected, and it is highly probable that, even under the Merovingian kings, these provincial governors had laid the foundations of that independence which was destined to change the countenance of Europe.\* The Lombard dukes, those

is given for the appointment of a duke, count, or patrician. The material part being the same, it was only necessary to *fill up the blanks*, as we should call it, by inserting the proper designation of office. It is expressed therefore; *actionem comitatus, ducatus, aut patriciatus in pago illo, quam antecessor tuus ille usque nunc visus est egisse, tibi agendum regendumque commisimus*. Montesquieu has fallen into a similar mistake, (l. xxx. c. 16.) forgetting for a moment, like Houard, that these instruments in Marculfus were not records of real transactions, but general forms for future occasion.

The office of patrician is rather more obscure. It seems to have nearly corresponded with what was afterwards called mayor of the palace, and to have implied the command of all the royal forces. Such at least were Celsus, and his successor Mummolus under Gontran. This is probable too from analogy. The patrician was the highest officer in the Roman empire, from the time of Constantine, and we know how much the Franks themselves, and still more their Gaulish subjects, affected to imitate the style of the imperial court.

\* That the offices of count and duke were originally but temporary, may be inferred from several passages in Gregory of Tours; as l. v. c. 37. l. viii. c. 18. But it seems by the laws of the Alemanni, c. 35. that the hereditary succession of their dukes was tolerably established at the beginning of the seventh century, when their code was promulgated. The Bavarians chose their own dukes out of one family, as is declared in their laws; tit. ii. c. i. and c. 20. (Lindebrog, *Codex Legum antiquarum*.) This the emperor Henry II. confirms in Ditmar; *Nonne scitis, (he says,) Bajuarios ab initio ducem eligendi liberam habere potestatem?* (Schmidt, *Hist. des Allemands*, t. ii. p. 404.) Indeed the consent of these German



especially of Spoleto and Benevento, acquired very early an hereditary right of governing their provinces, and that kingdom become a sort of federal aristocracy.\*

The throne of France was always filled by the royal house of Meroveus. However complete we may imagine the elective rights of the Franks, it is clear that a fundamental law restrained them to this family. Such indeed had been the monarchy of their ancestors the Germans; such long continued to be those of Spain, of England, and perhaps of all European nations. The reigning family was immutable; but at every vacancy the heir awaited the confirmation of a popular election, whether that were a substantial privilege, or a mere ceremony. Exceptions, however, to the lineal succession are rare in the history of any country, unless where an infant heir was thought unfit to rule a nation of freemen. But in fact it is vain to expect a system of constitutional laws rigidly observed in ages of anarchy and

provincial nations, if I may use the expression, seems to have been always required, as in an independent monarchy. Dittmar, a chronicler of the tenth century, says, that Echarde was made duke of Thuringia totius populi consensu. Pfeffel, *Abrégé Chronologique*, t. i. p. 184. With respect to France properly so called, or the kingdoms of Neustria and Burgundy, it may be less easy to prove the existence of hereditary offices under the Merovingians. But the feebleness of their government makes it probable, that so natural a symptom of disorganization had not failed to ensue. The Helvetian counts appear to have been nearly independent, as early as this period. (Planta's *Hist. of Switzerland*, chap. i.)

\* Giannone, l. iv.

ignorance. Those antiquaries who have maintained the most opposite theories upon such points are seldom in want of particular instances to support their respective conclusions.\*

Clovis was a leader of barbarians, who respected his valour, and the rank which they had given him, but were incapable of servile feelings, and jealous of their common as well as individual rights. In order to appreciate the power which he possessed, we have only to look at the well-known story of the vase of Soissons. When the plunder taken in Clovis's invasion of Gaul was set out in this place for distribution, he begged for himself a precious vessel, belonging to the church of Rheims. The army having expressed their willingness to consent: "You shall have nothing here, exclaimed a soldier, striking it with his battle-axe, but what falls to your share by lot." Clovis took the vessel, without marking any resentment; but found an opportunity, next year, of revenging himself by the death of the soldier. It is impossible to resist the inference which is supplied by this story. The whole behaviour of Clovis is that of a barbarian chief, not daring to withdraw any

\* Hottoman (*Franco-Gallia*, c. vi.) and Boulainvilliers (*Etat de la France*) seem to consider the crown as absolutely elective. The Abbé Vertot (*Mémoires de l'Acad. des Inscriptions*, t. iv.) maintains a limited right of election within the reigning family. M. de Foncemagne (t. vi. and viii. of the same collection) asserts a strict hereditary descent. Neither perhaps sufficiently distinguishes acts of violence from those of right, nor observes the changes in the French constitution between Clovis and Childeric III.

thing from the rapacity, or to chastise the rudeness of his followers.

But if such was the liberty of the Franks, when they first became conquerors of Gaul, we have good reason to believe, that they did not long preserve it. A people not very numerous spread over the spacious provinces of Gaul, wherever lands were assigned to, or seized by them.\* It became a burthen to attend those general assemblies of the nation, which were annually convened in the month of March, to deliberate upon public business, as well as to exhibit a muster of military strength. After some time, it appears that these meetings drew together only the bishops, and those invested with civil offices.† The ancient inhabitants of Gaul, having little notion of political liberty, were unlikely to resist the most tyrannical conduct. Many of them became officers of state, and advisers of the sovereign, whose ingenuity might teach maxims of despotism unknown in the forests of Germany. We shall scarcely wrong the bishops by suspecting them of more pliable courtliness than was natural to the long-haired warriors of Clovis.‡ Yet it is probable,

\* Du Bos, *Hist. Critique*, t. ii. p. 301. maintains that Clovis had not more than 3000 or 4000 Franks in his army, for which he produces some, though not very ancient, authorities. The smallness of the number of Salians may account for our finding no mention of the partitions made in their favour. See, however, Du Bos, t. iii. p. 466.

† Du Bos, t. iii. p. 327. Mably, *Observ. sur l'Histoire de France*, l. i. c. 3.

‡ Gregory of Tours, throughout his history, talks of the royal power in the tone of Louis XIV.'s court. If we were obliged

that some of the Franks were themselves instrumental in this change of their government. The court of the Merovingian kings was crowded with followers, who have been plausibly derived from those of the German chiefs described by Tacitus ; men, forming a distinct and elevated class in the state, and known by the titles of Fideles, Leudes, or Antrustiones. They took an oath of fidelity to the king, upon their admission into that rank, and were commonly remunerated with gifts of land. Under different appellations we find, as some antiquaries think, this class of courtiers in the early records of Lombardy and England. The general name of Vassals (from *Gwas*, a Celtic word for a servant) is applied to them in every country.\* By the assistance of these faithful supporters, it has been thought, that the regal authority of Clovis's successors was insured.† However this

to believe all we read, even the vase of Soissons would bear witness to the obedience of the Franks.

\* The Gasindi of Italy, and the Anglo-Saxon royal Thane appear to correspond, more or less, to the Antrustions of France. The word Thane, however, was used in a very extensive sense, and comprehended all free proprietors of land. That of *Leudes* seems to imply only subjection, and is frequently applied to the whole body of a nation, as well as, in a stricter sense, to the king's personal vassals. This name they did not acquire, originally, by possessing benefices; but rather, by being vassals, or servants, became the object of beneficiary donations. In one of Marculfus's precedents, l. i. f. 18. we have the form by which an Antrustion was created. See Du Cange under these several words, and Muratori's thirteenth dissertation on Italian Antiquities. The Gardingi sometimes mentioned in the laws of the Visigoths do not appear to be of the same description.

† Boantus \*\*\*\* vallatus in domo sua, ab hominibus regis

may be, the annals of his more immediate descendants exhibit a course of oppression, not merely displayed, as will often happen among uncivilized people, though free, in acts of private injustice, but in such general tyranny, as is incompatible with the existence of any real checks upon the sovereign.\*

But before the middle of the seventh century, the kings of this line had fallen into that contemptible state, which has been described in the last chapter. The mayors of the palace, who, from mere officers of the court, had now become masters of the kingdom, were elected by the Franks, not indeed the whole body of that nation, but the provincial governors, and considerable proprietors of land.† Some inequality

interfectus est. Greg Tur. l. viii. c. 11. A few spirited retainers were sufficient to execute the mandates of arbitrary power among a barbarous, disunited people.

\* The proofs of this may be found in almost every page of Gregory: among other places, see l. iv. c. ; l. vi. c. 29. ; l. ix. c. 30. In all edicts proceeding from the first kings, they are careful to express the consent of their subjects. Clovis's language runs—*Populus noster petit*. His son Childebert expresses himself: *unà cum nostris optimatibus pertractavimus—convenit unà cum leudis nostris*. But in the famous treaty of Andely, A. D. 587, no national assent seems to have been asked or given to its provisions, which were very important. And an edict of one of the Clotaires (it is uncertain whether the first or second of that name, though Montesquieu has given good reasons for the latter) assumes a more magisterial tone, without any mention of the Leudes.

† The revolution which ruined Brunehaut was brought about by the defection of her chief nobles, especially Warnachar, mayor of Austrasia. Upon Clotaire II.'s victory over her, he was compelled to reward these adherents at the expense of the monarchy. Warnachar was made mayor of Burgundy with

there probably existed from the beginning in the partition of estates, and this had been greatly increased by the common changes of property, by the rapine of those savage times, and by royal munificence. Thus arose that landed aristocracy, which became the most striking feature in the political system of Europe during many centuries, and is in fact its great distinction, both from the despotism of Asia, and the equality of republican governments.

There has been some dispute about the origin of nobility in France, which might perhaps be settled, or at least better understood, by fixing our conception of the term. In our modern acceptation, it is usually taken to imply certain distinctive privileges in the

an oath from the king never to dispossess him. (Fredegarius, c. 42.) In 626, the nobility of Burgundy declined to elect a mayor, which seems to have been considered as their right. From this time, nothing was done without the consent of the aristocracy. Unless we ascribe all to the different ways of thinking in Gregory and Fredegarius, the one a Roman bishop, the other a Frank or Burgundian, the government was altogether changed.

It might even be surmised, that the crown was considered as more elective than before. The author of *Gesta Regum Francorum*, an old chronicler who lived in those times, changes his form of expressing a king's accession from that of Clotaire II. Of the earlier kings he says only, *regnum recepit*. But of Clotaire, *Franci quoque prædictum Clotairium regem parvulum supra se in regnum statuerunt*. Again, of the accession of Dagobert I: *Austrasii Franci superiores congregati in unum, Dagobertum supra se in regnum statuunt*. In another place, *Decedente præfato rege Clodoveo, Franci Clotairium seniores puerum ex tribus sibi regem statuerunt*. Several other instances might be quoted.

political order, inherent in the blood of the possessor, and consequently not transferable like those which property confers. Limited to this sense, nobility, I conceive, was unknown to the conquerors of Gaul till long after the downfall of the Roman empire. They felt, no doubt the common prejudice of mankind in favour of those whose ancestry is conspicuous, when compared with persons of obscure birth. This is the primary meaning of nobility, and perfectly distinguishable from the possession of exclusive civil rights. Those who are acquainted with the constitution of the Roman republic, will recollect an instance of the difference between these two species of hereditary distinction, in the *patricii* and the *nobiles*. Though I do not think that the tribes of German origin paid so much regard to genealogy as some Scandinavian and Celtic nations; (else the beginnings of the greatest houses would not have been so enveloped in doubt as we find them;) there are abundant traces of the respect in which families of known antiquity were held among them.\*

\*The antiquity of French nobility is maintained temperately by Schmidt, *Hist. des Allemands*, t. i. p. 361. and with acrimony by Montesquieu, *Esprit des Loix*, l. xxx. c. 25. Neither of them proves any more than I have admitted. The expression of Ludovicus Pius to his freedman; *Rex fecit te liberum, non nobilem; quod impossibile est post libertatem*, is very intelligible, without imagining a privileged class. Of the practical regard paid to birth, indeed, there are many proofs. It seems to have been a recommendation in the choice of bishops. (Marculfi *Formulæ*, l. i. c. 4. *cum notis Bignonii*, in *Baluzii Capitularibus*.) It was probably much considered in conferring dignities. Fredegarius says of Protadius, mayor of the

But the essential distinction of ranks in France, perhaps also in Spain and Lombardy, was founded upon the possession of land, or upon civil employment. The aristocracy of wealth preceded that of birth, which indeed is still chiefly dependent upon the other for its importance. A Frank of large estate was styled a noble; if he wasted or was despoiled of his wealth, his descendants fell into the mass of the people, and the new possessor became noble in his stead. In these early ages, property did not very frequently change hands, and desert the families who had long possessed it. They were noble by descent, therefore, because they were rich by the same means. Wealth gave them power, and power gave them pre-eminence. But no distinction was made by the Salic or Lombard codes in the composition for homicide, the great test of political station except in favour of the king's vassals. It seems, however, by some of the barbaric codes, those namely of the Burgundians, Visigoths, Saxons, and the English colony of the latter nation\* that the free men were ranged by them into two or three classes, and a difference made in the price at which their lives

palace to Brunehaut, Quoscunque genere nobiles reperiebat, totos humiliare conabatur, ut nullus reperiretur, qui gradum, quem arripuerat, potuisset assumere.

\* Leg. Burgund. tit. 26. Leg. Visigoth. l. ii. t. 2. c. iv. (in Lindebrog.) Du Cange voc. Adalingus, Nobilis. Wilkins, Leg. Angl. Sax. passim. I think it cannot be denied, that nobility, founded either upon birth or property, and distinguished from mere personal freedom, entered into the Anglo-Saxon system. Thus the *eorl* and *ceorl* are opposed to each other, like the noble and roturier in France.



were valued ; so that there certainly existed the elements of aristocratic privileges, if we cannot in strictness admit their completion at so early a period. The Antrustions of the kings of the Franks were also noble, and a composition was paid for their murder, treble of that for an ordinary citizen ; but this was a personal, not an hereditary distinction. A link was wanting to connect their eminent privileges with their prosperity ; and this link was to be supplied by hereditary benefices.

Besides the lands distributed among the nation, others were reserved to the crown, partly for the support of its dignity, and partly for the exercise of its munificence. These were called fiscal lands ; they were dispersed over different parts of the kingdom, and formed the most regular source of revenue.\* But the greater portion of them were granted out to favoured subjects, under the name of benefices, the nature of which is one of the most important points in the policy of these ages. Benefices were, it is probable, most frequently bestowed upon the professed courtiers, the Antrustiones or Leudes, and upon the provincial governors. It by no means appears, that any conditions of military service were expressly annexed to these grants : but it may justly be presumed that such favours were not conferred

\* The demesne lands of the crown are continually mentioned in the early writers ; the kings, in journeying to different parts of their dominions, took up their abode in them. Charlemagne is very full in his directions as to their management. Capitularia, A. D. 797, and alibi.

without an exception of some return ; and we read both in law and history, that beneficiary tenets were more closely connected with the crown than mere alodial proprietors. Whoever possessed a benefice was bound to serve his sovereign in the field. But of alodial proprietors only the owner of three mansi was called upon for personal service. Where there were three possessors of single mansi, one went to the army, and the others contributed to his equipment.\* Such at least were the regulations of Charlemagne, whom I cannot believe, with Mably, to have relaxed the obligations of military attendance. After the peace of Coblenz in 860, Charles the Bald restored all alodial property belonging to his subjects who had taken part against him, but not his own beneficiary grants, which they were considered as having forfeited.

Most of those who have written upon the feudal system, lay it down that benefices were originally precarious, and revoked at pleasure by the sovereign ; that they were afterwards granted for life ; and at a subsequent period became hereditary. No satisfactory proof, however, appears to have been brought of the first stage in this progress.† At least, I am

\* Capitul. Car. Mag. ann. 807 and 812. I cannot define the precise area of a mansus. It consisted, according to Du Cange, of twelve jugera; but what he meant by a juger I know not. The ancient Roman juger was about five eighths of an acre; the Parisian arpent was a fourth more than one. This would make a difference as two to one.

† The position, which I have taken upon me to controvert, is laid down in almost every writer on the feudal system. Be-

not convinced, that beneficiary grants were ever considered as resumable at pleasure, unless where some delinquency could be imputed to the vassal. It is

sides Sir James Craig, Spelman, and other older authors, Houard, in his *Anciennes Loix des François*, t. i. p. 5. and the editors of the Benedictine collection, t. xi. p. 163. take the same point for granted. Mably, *Observations sur l'Histoire de France*, l. i. c. 3. calls it, *une vérité que M. Montesquieu a très bien prouvée*. And Robertson affirms with unusual positiveness: "These benefices were granted originally only during pleasure. No circumstance relating to the customs of the middle ages is better ascertained than this; and innumerable proofs of it might be added to those produced in *L'Esprit des Loix*, and by Du Cange." *Hist. Charles V.* vol. i. not. 8.

These testimonies, which Robertson has not chosen to bring forward, we cannot conjecture; nor is it easy to comprehend by what felicity he has discovered, in the penury of historical records during the sixth and seventh centuries, innumerable proofs of an usage which, by the confession of all, did not exist at any later period. But as the authorities quoted by Montesquieu have appeared conclusive both to Mably and Robertson, it may be proper to examine them separately. The following is the passage in *L'Esprit des Loix*, on which they rely:

On ne peut pas douter que d'abord les fiefs ne fussent amovibles. On voit, dans Grégoire de Tours, que l'on ôte à Sunégisile et à Galloman tout ce qu'ils tenoient du fisc, et qu'on ne leur laisse que ce qu'ils avoient en propriété. Gontran, élevant au trône son neveu Childebert, eut une conférence secrète avec lui, et lui indiqua ceux à qui il devoit donner des fiefs, et ceux à qui il devoit les ôter. Dans une formule de Marculfe, le roi donne en échange, non seulement des bénéfices que son fisc tenoit, mais encore ceux qu'un autre avoit tenus. La loi des Lombards oppose les bénéfices à la propriété. Les historiens, les formules, les codes des différens peuples barbares, tous les monumens qui nous restent, sont unanimes. Enfin, ceux qui ont écrit *Le Livre des Fiefs*, nous apprennent que d'abord les seigneurs purent les ôter à leur volonté qu' ensuite ils les assurèrent pour un an, et après les donnèrent pour toujours. l. xxx. c. 16.

possible, though I am not aware of any documents which prove it, that benefices may, in some instances, have been granted for a term of years, since even

The first of Montesquieu's authorities is from Gregory of Tours. l. ix. c. 38. Sunegisilus and Gallomagnus, two courtiers of Childebert, having been accused of a treasonable conspiracy, fled to sanctuary, and refused to stand their trial. Their beneficiary lands were upon this very justly taken away by a judicial sentence. What argument can be drawn from a case of forfeiture for treason or outlawry, that benefices were granted only during pleasure? 2. Gontran is said by Gregory to have advised his nephew Childebert, quos honoraret muneribus, quos ab honore depelleret l. vii. 33. But *honor* is more commonly used in the earliest writers for an office of dignity, than for a landed estate; and even were the word to bear in this place the latter meaning, we could not fairly depend on an authority, drawn from times of peculiar tyranny and civil convulsion. I am not contending that men were secure in their beneficiary, since they certainly were not so in their alodial estates: the sole question is, as to the right they were supposed to possess in respect of them. 3. In the precedent of Merculfus, quoted by Montesquieu, the king is supposed to grant lands, which some other person had lately held. But this is meant as a designation of the premises, and would be perfectly applicable, though the late possessor were dead. 4. It is certainly true, that the Lombard laws, (that is, laws enacted by the successors of Charlemagne in Lombardy,) and the general tenor of ancient records, with a few exceptions, oppose benefices to propriety: but it does not follow that the former were revocable at pleasure. This opposition of alodial to feudal estates subsists at present, though the tenure of the latter is any thing rather than precarious. 5. As to the *Libri Feudorum*, which are a compilation by some Milanese lawyers in the twelfth century, they cannot be deemed of much authority for the earlier history of the feudal system in France. There is certainly reason to think, that even in the eleventh century, the tenure of fiefs in some parts of Lombardy was rather precarious; but whether this were by any other law than that of the stronger, it would be hard to determine.

Du Cange, to whom Robertson also refers, gives this defini-

fiefs, in much later times, were occasionally of no greater extent. Their ordinary duration, however, was at least the life of the possessor, after which they reverted to the fisc.\* Nor can I agree with those, who deny the existence of hereditary benefices under the first race of French kings. The codes of

tion of a benefice: *prædium fiscale, quod a rege vel principe, vel ab alio quolibet ad vitam viro nobili utendum conceditur*. In a subsequent place, indeed, he says: *nec tantum erant ad vitam, sed pro libitu auferebantur*. For this he only cites a letter of the bishops to Louis the Debonair: *Ecclesiæ nobis a Deo commissæ non talia sunt beneficia, et hujusmodi regis proprietas, ut pro libitu suo inconsultè illas possit dare, aut auferre*. But how slight a foundation does this afford for the inference, that lay-benefices were actually liable to be resumed at pleasure? Suppose even this to be a necessary implication in the argument of those bishops, is it certain that they stated the law of their country with accuracy? Do we not find greater errors than this every day in men's speech and writings, relative to points with which they are not immediately concerned? In fact, there is no manner of doubt, that benefices were granted not only for life, but as inheritances, in the reign of Louis. In the next sentence Du Cange adds a qualification, which puts an end to the controversy, so far as his authority is concerned: *Non temere tamen, nec sine legali judicio auferebantur*. That those two sentences contradict each other, we cannot fail to determine; the latter, in my opinion, is the more correct position.

\*The following passage from Gregory of Tours seems to prove, that although sons were occasionally permitted to succeed their fathers, an indulgence which easily grew up into a right, the crown had, in his time, an unquestionable reversion after the death of its original beneficiary. *Hoc tempore et Wandelinus, nutritor Childeberti regis, obiit; sed in locum ejus nullus est subrogatus, eo quod regina mater curam velit propriam habere de filio. Quæcunque de fisco meruit, fisci juribus sunt relata. Obiit his diebus Bodegesilus dux plenus dierum; sed nihil de facultate ejus filiis minutum est. l. viii. c. 22* Gregory's work, however, does not go farther than 595.

the Burgundians, and of the Visigoths, which advert to them, are, by analogy, witnesses to the contrary.\* The precedents given in the forms of Marculfus (about 660) for the grant of a benefice, contain very full terms, extending it to the heirs of the beneficiary.† And Mably has plausibly inferred the perpetuity of benefices, at least in some instances, from the language of the treaty at Andely in 585, and of an edict of Clotaire II. some years later.‡ We can hardly doubt at least that children would put in a very strong claim to what their father had enjoyed; and the weakness of the crown in the seventh century must have rendered it difficult to reclaim its property.

\* *Leges Burgundionum*, tit. i. *Leges Wisigoth.* l. v. tit. 2.

† *Merculf. form.* xii. and xiv. l. l. This precedent was in use down to the eleventh century; its expressions recur in almost every charter. The earliest instance I have seen of an actual grant to a private person, is of Charlemagne to one John, in 795. *Baluzii Capitularia*, t. ii. p. 1400.

‡ *Quicquid antefati reges ecclesiis aut fidelibus suis contulerunt, aut adhuc conferre cum justitiâ Deo propitiante voluerint, stabiliter conservetur; et quicquid unicuique fidelium in utriusque regno per legem et justitiam redhibetur, nullum ei præjudicium ponatur, sed liceat res debitas possidere atque recipere. Et si aliquid unicuique per interregna sine culpâ sublatum est; audientiâ habitâ restauretur. Et de eo quod per munificentias præcedentium regum unusquisque usque ad transitum gloriosæ memoriæ domini Chlothacharii regis possedit, cum securitate possideat; et quod exinde fidelibus personis ablatum est, de præsentî recipiat. Fœdus Andeliacum, in *Gregor. Turon.* l. ix. c. 20.*

Quæcunque ecclesiæ vel clericis vel quibuslibet personis a gloriosæ memoriæ præfatis principibus munificentia largitate collatæ sunt, omni firmitate perdurent. *Edict. Chlotachar, I. vel potius II. in Recueil des Historiens*, t. iv. p. 116.

A natural consequence of hereditary benefices was that those who possessed them carved out portions to be held of themselves by a similar tenure. Abundant proofs of this custom, best known by the name of sub-infeudation, occur even in the capitularies of Pepin and Charlemagne. At a later period it became universal; and what had begun perhaps through ambition or pride was at last dictated by necessity. In that dissolution of all law which ensued after the death of Charlemagne, the powerful leaders, constantly engaged in domestic warfare, placed their chief dependence upon men whom they attached by gratitude, and bound by strong conditions. The oath of fidelity which they had taken, the homage which they had paid to the sovereign, they exacted from their own vassals. To render military service became the essential obligation which the tenant of a benefice undertook; and out of those ancient grants, now become for the most part hereditary, there grew up in the tenth century, both in name and reality, the system of feudal tenures.\*

This revolution was accompanied by another still

\* Somner says, that he has not found the word *feudum* anterior to the year 1000; and Muratori, a still greater authority, doubts whether it was used so early. I have however observed the words *feum* and *fevum*, which are manifestly corruptions of *feudum*, in several charters about 960. Vaissette, *Hist de Languedoc*, t. ii. Appendix, p. 107. 128. and alibi. Some of these fiefs appear not to have been hereditary. But, independently of positive instances, can it be doubted that some word of barbarous original must have answered, in the vernacular languages, to the Latin *beneficium*? See Du Cange, v. *Feudum*.

more important. The provincial governors, the dukes and counts, to whom we may add the marquisses or margraves, intrusted with the custody of the frontiers, had taken the lead in all public measures after the decline of the Merovingian kings. Charlemagne, duly jealous of their ascendancy, checked it by suffering the duchies to expire without renewal, by granting very few counties hereditarily, by removing the administration of justice from the hands of the counts into those of his own itinerant judges, and if we are not deceived in his policy, by elevating the ecclesiastical order as a counterpoise to that of the nobility. Even in his time, the faults of the counts are the constant theme of the capitularies; their dissipation and neglect of duty, their oppression of the poorer proprietors, and their artful attempts to appropriate the crown lands situated within their territory\*. If Charlemagne was unable to redress these evils, how much must they have increased under his posterity! That great prince seldom gave more than one county to the same person; and as they were generally of moderate size, co-extensive with episcopal dioceses, there was less danger, if this policy had been followed, of their becoming independent.† But Louis the Debonair, and, in a still greater degree, Charles the Bald, allowed several

\* *Capitularia Car. Mag. et Lud. Pii. passim. Schmidt, Hist. des Allemands, t. ii. p. 158. Gaillard, Vie de Charlem. t. iii. p. 118.*

† *Vaissette, Hist. de Languedoc, t. i. p. 587. 700. and not 57.*



counties to be enjoyed by the same person. The possessors constantly aimed at acquiring private estates within the limits of their charge, and thus both rendered themselves formidable, and assumed a kind of patrimonial right to their dignities. By a capitulary of Charles the Bald, A. D. 877, the succession of a son to his father's county appears to be recognized as a known usage.\* In the next century there followed an entire prostration of the royal authority, and the counts usurped their governments as little sovereignties, with the domains and all regalian rights, subject only to the feudal superiority of the king.† They now added the name of the county to their own, and their wives took the appellation of countess.‡ In Italy, the independence of the dukes was still more complete; and although Otho the Great and his descendants kept a stricter rein over those of Germany, yet we find the great fiefs of their empire throughout the tenth century, granted almost invariably to the male and even female heirs of the last possessor.

\* Baluzii Capitularia, t. ii. p. 263 and 269. This is a questionable point, and most French antiquaries consider this famous capitulary as the foundation as an hereditary right in counties. I am inclined to think, that there was at least a practice of succession, which is implied and guaranteed by this provision.

† It appears, by the record of process in 918, that the counts of Toulouse had already so far usurped the rights of their sovereign, as to claim an estate, on the ground of its being a royal benefice. Hist. de Languedoc, t. ii. Appen. p. 56.

‡ Vaissette, Hist. de Languedoc, t. i. p. 588, and *infra*. t. ii. p. 38. 109. and Appendix, p. 56.

Mean while the alodial proprietors, who had hitherto formed the strength of the state, fell into a much worse condition. They were exposed to the rapacity of the counts, who, whether as magistrates and governors, or as overbearing lords, had it always in their power to harrass them. Every district was exposed to continual hostilities ; sometimes from a foreign enemy, more often from the owners of castles and fastnesses, which in the tenth century, under pretence of resisting the Normans and Hungarians, served the purposes of private war. Against such a system of rapine, the military compact of lord and vassal was the only effectual shield ; its essence was the reciprocity of service and protection. But an insulated alodialist had no support : his fortunes were strangely changed, since he claimed, at least in right, a share in the legislation of his country, and could compare with pride his patrimonial fields with the temporary benefices of the crown. Without law to redress his injuries, without the royal power to support his right, he had no course left, but to compromise with oppression, and subject himself, in return for protection, to a feudal lord. During the tenth and eleventh centuries it appears that alodial lands in France had chiefly become feudal : that is, they had been surrendered by their proprietors, and received back again upon the feudal conditions ; or more frequently, perhaps, the owner had been compelled to acknowledge himself the *man* or vassal of a suzerain, and thus to confess an original grant

which had never existed.\* Changes of the same nature, though not perhaps so extensive, or so distinctly to be traced, took place in Italy and Germany. Yet it would be inaccurate to assert, that the prevalence of the feudal system has been unlimited; in a great part of France, alodial tenures always subsisted; and many estates in the empire were of the same description.†

\* Hist. de. Languedoc, t. ii. p. 109. It must be confessed, that there do not occur so many specific instances of this conversion of alodial tenure into feudal, as might be expected, in order to warrant the supposition in the text. Several records however are quoted by Robertson, Hist. Charles V. note 8; and others may be found in diplomatic collections. A precedent for surrendering alodial property to the king, and receiving it back as his benefice, appears even in Marculfus, l. i. form. 13. The county of Cominges, between the Pyrenees, Toulouse, and Bigorre, was alodial till 1244, when it was put under the feudal protection of the count of Toulouse. It devolved by escheat to the crown in 1443. Villaret, t. xv. p. 346.

In many early charters, the king confirms the possession even of alodial property, for greater security in lawless times; and in those of the tenth and eleventh centuries, the word *alodium* is continually used for a feud, or hereditary benefice, which renders this subject still more obscure.

† The maxim, *Nulle terre sans seigneur*, was so far from being universally received in France, that in almost all the southern provinces, or *pays du droit écrit*, lands were presumed to be alodial, unless the contrary was shewn, or, as it was called, *franc-aleux sans titre*. The parliaments however seem latterly to have inclined against this presumption, and have thrown the burthen of proof on the party claiming alodality. For this see Denisart. *Dictionnaire des Décisions*, art. *Franc-aleu*. And the famous maxim of the Chancellor Duprat, *nulle terre sans seigneur*, was true, as I learn from the dictionary of Houard, with respect to jurisdiction, though false as to tenure; alodial lands insulated (*enclavés*) within the fief of a lord, be-

There are, however, vestiges of a very universal custom distinguishable from the feudal tenure of land, though so analogous to it, that it seems to have nearly escaped the notice of antiquaries. From this silence of other writers, and the great obscurity of the subject, I am almost afraid to notice what several passages in ancient laws and instruments concur to prove, that, besides the relation established between lord and vassal by beneficiary grants, there was another more personal, and more closely resembling that of patron and client in the Roman republic. This was usually called *commendation*; and appears to have been founded on two very general principles, both of which the distracted state of society inculcated. The weak needed the protection of the powerful; and the government needed some security for public order. Even before the invasion of the Franks, Salvian, a writer of the fifth century, mentions the custom of obtaining the protection of the great by money, and blames their rapacity, though he allows the natural reasonableness of the practice.\* The disadvantageous condition of the less powerful freemen, which ended in the servitude of one part, and in the feudal vassalage of another, led a few, who fortunately still preserved their alodial property, to insure its defence by a stipulated ing subject to his territorial justice. Diction. de Houard, art. Aleu.

In Germany, according to Du Cange, voc. Baro, there is a distinction between Barones, and Semper-Barones; the latter holding their lands alodially.

\* Du Cange, v. Salvamentum.

payment of money. Such payments, called *Salvamenta*, may be traced in extant charters, chiefly indeed of monasteries.\* In the case of private persons, it may be presumed that this voluntary contract was frequently changed by the stronger party into a perfect feudal dependence. From this however, as I imagine, it properly differed in being capable of dissolution at the inferior's pleasure, without incurring a forfeiture, as well as in having no relation to land. Homage, however, seems to have been incident to commendation, as well as to vassalage. Military service was sometimes the condition of this engagement. It was the law of France, so late at least as the commencement of the third race of kings, that no man could take a part in private wars, except in defence of his own lord. This we learn from an historian, about the end of the tenth century, who relates that one Erminfrid, having been released from his homage to Count Burchard, on ceding the fief he had held of him to a monastery, renewed the ceremony on a war breaking out between Burchard and another nobleman, wherein he was desirous to give assistance; since, the author observes, it is not, nor has been the practice in France, for any man to be concerned in war, except in the presence or by the command of his lord.† Indeed there is reason to infer, from the *Capitularies* of Charles the Bald that every man was bound to attach himself to some lord, though it was the privi-

\* Du Cange, v. *Salvamentum*.

† *Recueil des Historiens*, t. x. p. 355.

lege of a freeman to chuse his own superior.\* And this is strongly supported by the analogy of our Anglo-Saxon laws, where it is frequently repeated, that no man should continue without a lord. There are too, as it seems to me, a great number of passages in *Domesday-Book*, which confirm this distinction between personal commendation and the beneficiary tenure of land. Perhaps I may be thought to dwell too prolixly on this obscure custom; but as it tends to illustrate those mutual relations of lord and vassal, which supplied the place of regular government in

\* *Unusquisque liber homo, post mortem domini sui, licentiam habeat se commendandi inter hæc tria regna ad quemcunque voluerit. Similiter et ille qui nondum alicui commendatus est. Baluzii Capitularia, t. i. p. 443. A. D. 806. Volumus etiam ut unusquisque liber homo in nostro regno seniores qualem voluerit in nobis et in nostris fidelibus recipiat. Capit. Car. Calvi. A. D. 877. Et volumus ut cujuscunque nostrum homo, in cujuscunque regno sit, cum seniore suo in hostem, vel aliis suis utilitatibus pergat. Ibid. See too Baluze, t. i. p. 536, 537.*

By the Establishments of St. Louis, c. 87. every stranger coming to settle within a barony was to acknowledge the baron as lord within a year and a day, or pay a fine. In some places, he even become the serf or villein of the lord. *Ordonnances des Rois*, p. 187. Upon this jealousy of unknown settlers, which pervades the policy of the middle ages, was founded the *droit d'aubaine*, or right to their moveables after their decease. See Preface to *Ordonnances des Rois*, t. i. p. 15.

The article *Commendatio* in du Cange's Glossary furnishes some hints upon this subject, which however that author does not seem to have fully apprehended. Carpentier, in his *Supplement to the Glossary*, under the word *Vassaticum*, gives the clearest notice of it that I have any where found. Since writing the above note, I have found the subject touched by M. de Montlosier, *Hist. de la Monarchie Française*, t. i. p. 354.

the polity of Europe, and has seldom or never been explicitly noticed, its introduction seemed not improper.

It has been sometimes said that feuds were first rendered hereditary in Germany, by Conrad II. surnamed the Salic. This opinion is perhaps erroneous. But there is a famous edict of that emperor at Milan, in the year 1037, which, though immediately relating only to Lombardy, marks the full maturity of the system, and the last stage of its progress.\* I have remarked already the custom of sub-infeudation, or grants of lands by vassals to be held of themselves, which had grown up with the growth of these tenures. There had occurred, however, some disagreement for want of settled usage, between these inferior vassals and their immediate lords, which this edict was expressly designed to remove. Four regulations of great importance are established therein : that no man should be deprived of his fief, whether held of the emperor, or a mesne lord, but by the laws of the empire, and the judgement of his peers;† that from such judgement, an immediate vassal might appeal to his sovereign ; that

\* Spelman tells us, in his *Treatise of Feuds*, chap. ii. that Conradus Selicus, a *French emperor, but of German descent* [what can this mean?] went to Rome about 915 to fetch his crown from Pope John X. when, according to him, the succession of a son to his father's fief was first conceded. An almost unparalleled blunder in a so learned a writer ! Conrad the Salic was elected at Worms in 1024, crowned at Rome by John XIX. in 1027, and made this edict at Milan in 1037.

† Nisi secundum constitutionem antecessorum nostrorum, et judicium parium suorum; the very expressions of *Magna Charta*.

fiefs should be inherited by sons and their children ; or in their failure. by brothers, provided they were *feuda paterna*, such as had descended from the father ;\* and that the lord should not alienate the fief of his vassal without his consent.†

Such was the progress of these feudal tenures, which determined the political character of every European monarchy where they prevailed, as well as formed the foundation of its jurisprudence. It is certainly inaccurate to refer this system, as is frequently done, to the destruction of the Roman empire by the northern nations, though in the beneficiary grants of those conquerors we trace its beginning. Five centuries, however, elapsed, before the alodial tenures, which had been incomparably the most general, gave way, and before the reciprocal contract of the feud attained its maturity. It is now time to describe the legal qualities and effects of this

\* “Gerardus noteth,” says Sir H. Spelman, “that this law settled not the feud upon the eldest son, or any other son of the feudatary particularly; but left in the lord’s election to place himself with which he would.” But the phrase of the edict runs, *filios ejus beneficium tenere*; which, when nothing more is said, can only mean a partition among the sons.

† The last provision may seem strange, at so advanced a period of the system; yet, according to Giannone, feuds were still revocable by the lord in some parts of Lombardy. *Istoria di Napoli*, l. xiii. c. 3. It seems, however, no more than had been already enacted by the first clause of this edict. Another interpretation is possible; namely, that the lord should not alienate his own seigniorship without his vassal’s consent, which was agreeable to the feudal tenures. This indeed would be putting rather a forced construction on the words, *ne domino feudum militis alienare liceat*.



relation, so far only as may be requisite to understand its influence upon the political system.

The essential principle of a fief was a mutual contract of support and fidelity. Whatever obligations it laid upon the vassal of service to his lord, corresponding duties of protection were imposed by it on the lord towards his vassal.\* If these were transgressed on either side, the one forfeited the land, the other his seigniorship or right over it. Nor were motives of interest left alone to operate in securing the feudal connexion. The associations founded upon ancient custom and friendly attachment, the impulses of gratitude and honour, the dread of infamy, the sanctions of religion, were all employed to strengthen these ties, and to render them equally powerful with the relations of nature, and far more so than those of political society. It is a question agitated among the feudal lawyers, whether a vassal is bound to follow the standard of his lord against his own kindred.† It was one more important, whether he must do so against the king. In the works of those who wrote when the feudal system was declining, or who were anxious to maintain the royal authority, this is com-

\* Crag. *Jus Feudale*, l. ii. tit. 11. Beaumanoir, *Coûtumes de Beauvoisis*, c. lxi. p. 311. Ass. de Jérus. c. 217. Lib. Feud. l. ii. tit. 26. 47.

Upon the mutual obligation of the lord towards his vassal, seems to be founded the law of warranty, which compelled him to make indemnification where the tenant was evicted of his land. This obligation, however unreasonable it may appear to us, extended, according to the feudal lawyers, to cases of mere donation Crag. l. ii. tit. 4. Butler's *Notes on Co. Litt.* p. 365.

† Crag. l. ii. tit. 4.

monly decided in the negative. Littleton gives a form of homage, with a reservation of the allegiance due to the sovereign;\* and the same prevailed in Normandy and some other countries.† A law of Frederic Barbarossa enjoins, that in every oath of fealty to an inferior lord, the vassal's duty to the emperor should be expressly reserved. But it was not so during the height of the feudal system in France. The vassals of Henry II. and Richard I. never hesitated to adhere to them against the sovereign, nor do they appear to have incurred any blame on that account. Even so late as the age of St. Louis, it is laid down in his Establishments, that if justice is refused by the king to one of his vassals, he might summon his own tenants, under penalty of forfeiting their fiefs, to assist him in obtaining redress by arms.‡ The count of Britany, Pierre de Dreux,

\* Sect. lxxxv.

† Houard, *Anc. Loix des François*, p. 114. See too an instance of this reservation in *Recueil des Historiens*, t. xi p. 447.

‡ Si le Sire dit a son homme lige; Venez vous en avec moi, je veux guerroyer mon Seigneur, qui me denie le judgement de sa cour, le vassal doit repondre; j'irai seavoir, s'il est ainsi que vous me dites. Alors il doit aler trouver le supérieur, et luy dire: Sire, le gentilhomme de qui je tiens mon fief, se plaint que vous lui refusez justice; je viens pour en seavoir la verite; car je suis semoncé de marcher en guerre contre vous. Si la reponse est que volontiers il fera droit en sa cour, l'homme n'est point obligé de déférer a la requisition du Sire; mais il doit, ou le suivre, ou se resoudre a perdre son fief, si le chef Seigneur persiste dans son refus. *Etablissemens de St. Louis*, c. 49. I have copied this from Velly, t. vi. p. 213. who has modernized the orthography, which is almost unintelligible in

had practically asserted this feudal right during the minority of St. Louis. In a public instrument, he announced to the world, that having met with repeated injuries from the regent, and denial of justice, he had let the king know that he no longer considered himself as his vassal, but renounced his homage and defied him.\*

The ceremonies used in conferring a fief were principally three: homage, fealty, and investiture. 1. The first was designed as a significant expression of the submission and devotedness of the vassal towards his lord. In performing homage, his head was uncovered, his belt ungirt, his sword and spurs removed; he placed his hands, kneeling, between those of the lord and promised to become his man from thenceforward; to serve him with life, and limb and worldly honour, faithfully and loyally, in consideration of the lands which he held under him. None but the lord in person could accept homage,

the *Ordonnances des Rois*. One MS. gives the reading *Roi* instead of *Seigneur*. And the law certainly applies to the king *exclusively*; for in case of denial of justice by a mesne lord there was an appeal the king's court, but from his injury there could be no appeal but to the sword.

\* Du Cange, *Observations sur Joinville*, in *Collection des Mémoires*, t. i. p. 196. It was always necessary for a vassal to renounce his homage, before he made war on his lord, if he would avoid the shame and penalty of feudal treason. After a reconciliation, the homage was renewed. And in this no distinction was made between the king and another superior. Thus Henry II. did homage to the king of France in 1188, having renounced his former obligation to him at the commencement of the preceding war. *Matt. Paris*, p. 126.

which was commonly concluded by a kiss.\* 2. An oath of fealty was indispensable in every fief; but the ceremony was less peculiar than that of homage, and it might be received by proxy. It was taken by ecclesiastics, but not by minors: and in language differed little from the form of homage.† 3. Investiture, or the actual conveyance of feudal lands, was of two kinds; proper and improper. The first was an actual putting in possession upon the ground, either by the lord or his deputy; which is called in our law livery of seizin. The second was symbolical, and consisted in the delivery of a turf, a stone, a wand, a branch, or whatever else might have been made usual by the caprice of local custom. Du Cange enumerates not less than ninety-eight varieties of investitures.‡

Upon investiture, the duties of the vassal commenced. These it is impossible to define or enumerate; because the services of military tenure, which is chiefly to be considered, were in their nature un-

\* Du Cange, *Hominium*, and Carpentier's *Supplement*. id. *voc* Littleton, s. 85. *Assises de Jérusalem*, c. 204. *Crag*. l. i. tit. 11. *Recueil des Historiens*, t. ii. préface, p. 174. *Homagium per paragium* was unaccompanied by any feudal obligation, and distinguished from *homagium ligeum*, which carried with it an obligation of fidelity. The dukes of Normandy rendered only homage per paragium to the kings of France, and received the like from the dukes of Britany. In liege homage, it was usual to make reservations of allegiance to the king or any other lord whom the homager had previously acknowledged.

† *Littl*. s. 91. Du Cange, *voc*. *Fidelitas*.

‡ Du Cange, *voc*. *Investitura*.

certain, and distinguished as such, from those incident to feuds of an inferior description. It was a breach of faith to divulge the lord's counsel, to conceal from him the machination of others, to injure his person or fortune, or to violate the sanctity of his roof and the honour of his family.\* In battle he was

\* Assises de Jérusalem, c. 265. Home ne doit á la feme de son seigneur, ne á sa fille requerre vilainie de son cors, ne á sa sœur *tant com elle est demoiselle en son hostel*. I mention this part of feudal duty on account of the light it throws on the statute of treasons, 25 E. III. One of the treasons therein specified is, *si omme violast la compaigne le roy, ou leigné file le roy nient marié ou la compaigne leigné fitz et heire le roy*. Those, who like Sir E. Coke and the modern lawyers in general, explain this provision by the political danger of confusing the royal blood, do not apprehend its spirit. It would be absurd, upon such grounds, to render the violation of the king's eldest daughter treasonable, so long only as she remains unmarried, when, as is obvious, the danger of a spurious issue inheriting could not arise. I consider this provision therefore as entirely founded upon the feudal principles, which make it a breach of faith (that is, in the primary sense of the word, a treason) to sully the honour of the lord in that of the near relations who were immediately protected by residence in his house. If it is asked, why this should be restricted by the statute to the person of the eldest daughter, I can only answer that this, which is not more reasonable according to the common political interpretation, is analogous to many feudal customs in our own and other countries which attribute a sort of superiority in dignity to the eldest daughter.

It may be objected, that in the reign of Edward III. there was little left of the feudal principle in any part of Europe, and least of all in England. But the statute of treasons is a declaration of the ancient law, and comprehends, undoubtedly, what the judges who drew it could find in records now perished, or in legal traditions of remote antiquity. Similar causes of forfeiture are enumerated in the *Libri Feudorum*, l. i. tit. 5. and l. ii. tit. 24. In the Establishments of St. Louis, c. 51, 52, it is said, that a lord seducing his vassal's daughter,

bound to lend his horse to his lord, when dismounted; to adhere to his side, while fighting: and to go into captivity as a hostage for him, when taken. His attendance was due in the lord's courts, sometimes to witness, and sometimes to bear a part in, the administration of justice.\*

The measure, however, of military service was generally settled by some usage. Forty days was the usual term, during which the tenant of a knight's fee was bound to be in the field at his own expense.† This was extended by St. Louis to sixty days, unless when the charter of infeudation expressed a shorter period. But the length of service diminished with the quantity of land. For half a knight's fee but twenty days were due; for an eighth part, but five; and when this was commuted for an escuage or pecuniary assessment, the same proportion was observed.‡ Men turned of sixty, public magistrates, and

intrusted to his custody, lost his seignior; a vassal guilty of the same crime towards the family of his suzerain, forfeited his land. A proof of the tendency which the feudal law had to purify public morals, and to create that sense of indignation and resentment with which we now regard such breaches of honour.

\* *Assises de Jérusalem*, c. 222. A vassal, at least in many places, was bound to reside upon his fief, or not to quit it without the lord's consent. *Du Cange*, *voc. Reseantia, Remanentia*. *Recueil des Historiens*, t. xi. préface, p. 172.

† In the kingdom of Jerusalem, feudal service extended to a year. *Assises de Jérusalem*, c. 230. It is obvious, that this was founded on the peculiar circumstances of that state. Service of castle-guard, which was common in the north of England, was performed without limitation of time. *Lyttleton's Henry II.* vol. ii. p. 184.

‡ *Du Cange*, *voc. Feudum militis; Membrum Loricæ*. *Stuart's View of Society*, p. 382. This division by knight's fees

of course women were free from personal service, but obliged to send their substitutes. A failure in this primary duty incurred perhaps strictly a forfeiture of the fief. But it was usual for the lord to inflict an amercement, known in England by the name of *escuage*.\* Thus in Philip III.'s expedition against the count de Foix in 1274, barons were assessed for their default of attendance, at a hundred sous a day for the expenses which they had saved, and fifty sous as a fine to the king; bannerets, at twenty sous for expenses, and ten as a fine; knights and squires in

is perfectly familiar in the feudal law of England. But I must confess my inability to adduce decisive evidence of it in that of France, with the usual exception of Normandy. According to the natural principle of fiefs, it might seem that the same personal service would be required from the tenant, whatever were the extent of his land. William the Conqueror, we know, distributed this kingdom into about 60,000 parcels, of nearly equal value, from each of which the service of a soldier was due. He may possibly have been the inventor of this politic arrangement. Some rule must however have been observed in all countries in fixing the amercement for absence, which could only be equitable if it bore a just proportion to the value of the fief. And the principle of the knight's fee was so convenient and reasonable that it is likely to have been adopted in imitation of England by other feudal countries. In the roll of Philip III.'s expedition, as will appear by a note immediately below, there are, I think, several presumptive evidences of it, and though this is rather a late authority to establish a feudal principle, yet I have ventured to assume it in the text.

The knight's fee was fixed in England at the annual value of 20*l*. Every estate supposed to be of this value, and entered as such in the rolls of the exchequer, was bound to contribute the service of a soldier, or to pay an *escuage* to the amount assessed upon knight's fees.

\* Littleton, l. ii. c. 3. Wright's Tenures, p. 121.

the same proportion. But barons and bannerets were bound to pay an additional assessment for every knight and squire of their vassals, whom they ought to have brought with them into the field.\* The regulations as to place of service were less uniform than those which regard time. In some places, the vassal was not bound to go beyond the lord's territory,† or only so far as he might return the same day. Other customs compelled him to follow his chief upon all his expeditions.‡ These inconvenient and varying usages betray the origin of the feudal obligations, not founded upon any national policy, but springing from the chaos of anarchy and intestine war, which they were well calculated to perpetuate. For the public defence, their machinery was totally unserviceable, until such changes were wrought, as destroyed the character of the fabric.

Independently of the obligations of fealty and service, which the nature of the contract created,

\* Du Chesne, *Script. Rerum Gallicarum*, t. v. p. 553. Daniel, *Histoire de la Milice Française*, p. 72. The following extracts from the muster-roll of this expedition will illustrate the varieties of feudal obligation. *Johannes d'Ormoy debet servitium per quatuor dies. Johannes Malet debet servitium per viginti dies, pro quo servitio misit Richardum Tichet. Guido de Laval debet servitium duorum militum et dimidii. Dominus Sabrandus dictus Chabot dicit quod non debet servitium domino regi, nisi in comitatu Pictaviensi, et ad sumptus regis, tamen venit ad preces regis cum tribus militibus et duodecim scutiferis. Guido de Lusigniaco Dom. de Pierac dicit, quod non debet aliquid regi præter homagium.*

† This was the custom of Beauvoisis. Beaumanoir, c. 2.

‡ Du Cange, et Carpentier, *voc. Hostis*.



other advantages were derived from it by the lord, which have been called feudal incidents. These were 1. **Reliefs.** 2. **Fines upon alienation.** 3. **Escheats.** 4. **Aids;** to which may be added, though not generally established, 5. **Wardships,** and 6. **Marriage.**

1. Some writers have accounted for **Reliefs** in the following manner. Benefices, whether depending upon the crown, or its vassals, were not originally granted by way of absolute inheritance, but renewed from time to time upon the death of the possessor, till long custom grew up into right. Hence a sum of money, something between a price and a gratuity, would naturally be offered by the heir, on receiving a fresh investiture of the fief: and length of time might as legitimately turn this present into a due of the lord, as it rendered the inheritance of the tenant indefeasible. This is a very specious account of the matter. But those who consider the antiquity to which hereditary benefices may be traced, and the unreserved expressions of those instruments by which they were created, as well as the undoubted fact, that a large proportion of fiefs had been absolute alodial inheritances, never really granted by the superior, will perhaps be led rather to look for the origin of reliefs in that rapacity with which the powerful are ever ready to oppress the feeble. When a feudal tenant died, the lord, taking advantage of his own strength and the confusion of the family, would seize the estate into his hands either by the right of force, or under some litigious pretext. Against this vio-

lence ; the heir could in general have no resource but a compromise ; and we know how readily acts of successful injustice change their name, and move demurely, like the wolf in the fable, under the cloathing of law. Reliefs and other feudal incidents are said to have been established in France\* about the latter part of the tenth century, and they certainly appear in the famous edict of Conrad the Salic, in 1037, which recognizes the usage of presenting horses and arms to the lord, upon a change of tenancy.† But this also subsisted under the name of heriot, in England, as early as the reign of Canute.

A relief was a sum of money (unless where charter or custom introduced a different tribute) due from every one of full age, taking a fief by descent. This was in some countries arbitrary, or *ad misericordiam*, and the exactions practised under this pretence both upon superior and inferior vassals, ranked among the greatest abuses of the feudal policy. Henry I. of England promises in his charter, that they shall in future be just and reasonable ; but the rate does not appear to have been finally settled, till it was laid down in Magna Charta, at about a fourth of the annual value of the fief. We find also fixed reliefs among the old customs of Normandy and Beauvoisis. By a law of St. Louis, in 1245,‡ the lord was en-

\* Ordonnances des Rois de France, t. i. preface, p. 10.

† *Servato usu valvassorum majorum in tradendis armis equisque suis senioribus.* This, among other reasons, leads me to doubt the received opinion, that Italian fiefs were not hereditary before the promulgation of this edict.

‡ Ordonnances des Rois, p. 55.

titled to enter upon the lands, if the heir could not pay the relief, and possess them for a year. This right existed unconditionally in England under the name of primer seisin, but was confined to the king.\*

2. Closely connected with reliefs, were the fines paid to the lord, upon the alienation of his vassal's feud; and indeed we frequently find them called by the same name. The spirit of feudal tenure established so intimate a connexion between the two parties, that it could be dissolved by neither without requiring the other's consent. If the lord transferred his seignior, the tenant was to testify his concurrence; and this ceremony was long kept up in England under the name of attornment. The assent of the lord to his vassal's alienation was still more essential, and more difficult to be obtained. He had received his fief, it was supposed, for reasons peculiar to himself or to his family; at least his heart and arm were bound to his superior; and his service was not to be exchanged for that of a stranger who might be unable, or unwilling to render it. A law of Lothaire II. in Italy forbids the alienation of fiefs,

\* Du Cange, v. Placitum, Relevium, Sporla. By many customs, a relief was due on every change of the lord, as well as of the vassal, but this was not the case in England. Beaumanoir speaks of reliefs as due only on collateral succession. Coutumes de Beauvoisis, c. 27. In Anjou and Maine they were not even due upon succession between brothers. Ordonnances des Rois, t. i. p. 58. And M. de Pastoret, in his valuable preface to the sixteenth volume of that collection, says it was a rule, that the king had nothing upon lineal succession of a fief, whether in the ascending or descending line, but *la bouche et les mains*; i. e. homage and fealty. p. 20.

without the lord's consent.\* This prohibition is repeated in one of Frederic I. and a similar enactment was made by Roger king of Sicily.† By the law of France, the lord was entitled, upon every alienation made by his tenant, either to redeem the fief by paying the purchase-money, or to claim a certain part of the value, by way of fine upon the change of tenancy.‡ In England, even the practice of subinfeudation, which was more conformable to the law of fiefs and the military genius of the system, but injurious to the suzerains, who lost thereby their escheats and other advantages of seignior, was checked by Magna Charta,§ and forbidden by

\* Lib. Feudorum, l. ii. tit. 9. and 52. This was principally levelled at the practice of alienating feudal property in favour of the church, which was called, *pro animâ judicare*. Radevicius in Gestis Frederic. I. l. iv. c. 7. Lib. Feud. l. i. tit. 7. 16. l. ii. tit. 10.

† Giannone, l. ii. c. 5.

‡ Du Cange, v. *Reaccapitum*, *Placitum*, *Rachatum*. Pastoret, préface au seizième tome des *Ordonnances*, p. 20. Houard, *Dict. du Droit Normand*. Art. *Fief*. Argou, *Inst. du Droit François*, l. ii. c. 2. In Beaumanoir's age and district at least, sub-infeudation without the lord's licence incurred a forfeiture of the land; and his reason extends of course more strongly to alienation. *Coûtumes de Beauvoisis*, c. 2. Velly, t. vi. p. 187. But, by the general law of feuds, the former was strictly regular, while the tenant forfeited his land by the latter. Craig mentions this distinction as one for which he is perplexed to account. *Jus Feudale*, l. iii. tit. 3. p. 632. It is however perfectly intelligible upon the original principles of feudal tenure.

§ Dalrymple seems to suppose, that the 32d chapter of Magna Charta relates to alienation, and not to sub-infeudation. *Essay on Feudal Property*, edit. 1758. p. 83. See Sir E. Coke, 2 *Inst.* p. 65 and 501; and Wright on *Tenures*, contra.

the Statute 18 Edward I. called *Quia Emptores*, which at the same time gave the liberty of alienating lands, to be holden of the grantor's immediate lord. The tenants of the crown were not included in this act ; but that of 1 Edward III. c. 12. enabled them to alienate, upon the payment of a composition into chancery, which was fixed at one third of the annual value of the lands.\*

These restraints, placed for the lord's advantage upon the transfer of the feudal property, are not to be confounded with those designed for the protection of heirs and preservation of families. Such were the *jus protimeseos*, in the books of the fiefs,† and *retrait lignager* of the French law which gave to the relations of the vendor a pre-emption upon the sale of any fief, and a right of subsequent redemption. Such was the positive prohibition of alienating a fief held by title of descent, (*feudum paternum*,) without the consent of the kindred in the line of possible

Mr. Hargrave observes, that "the history of our law with respect to the powers of alienation before the statute of *Quia emptores terrarum* is very much involved in obscurity." Notes on Co. Litt. 43. a. In Glanvil's time, apparently, a man could only alienate (to hold of himself) *rationabilem partem de terrâ suâ*. l. vii. c. 1. But this may have been in favour of the kindred, as much as of the lord. Dalrymple's Essay, *ubi supra*.

It is probable, that Coke is mistaken in supposing, that "at the common law, the tenant might have made a feoffment of whole tenancy to be holden of the lord."

\* 2 Inst. p. 66. Blackstone's Commentaries, vol. ii. c. 5.

† Lib. Feud. l. v. t. 13. There were analogies to this *jus protimeseos* in the Roman law, and, still more closely, in the constitutions of the later Byzantine emperors.

succession.\* Such too were the still more rigorous fetters imposed by the English statute of entails, which precluded all lawful alienation, till, after two centuries, it was overthrown by the fictitious process of a common recovery. Though these partake in some measure of the feudal spirit, and would form an important head in the legal history of that system, it will be sufficient to allude to them in a sketch, which is confined to the developement of its political influence.

A custom, very similar in effect to sub-infeudation, was the tenure by *frerage*, which prevailed in many parts of France. Primogeniture, in that extreme which our common law has established, was unknown, I believe, in every country upon the continent. The customs of France found means to preserve the dignity of families, and the indivisibility of a feudal homage, without exposing the younger sons of a gentleman to absolute beggary or dependence. Baronies indeed were not divided; but the eldest son was bound to make a provision in money, by way of apanage, for the other children, in proportion to his circumstances and their birth.† As to inferior fiefs, in many places, an equal partition was made; in others, the eldest took the chief portion, generally

\* *Alienatio feudi paterni non valet etiam domini voluntate, nisi agnatis consentientibus.* Lib. Feud. apud Wright on Tenures, p. 108 and 156.

† Du Cange, v. *Apanamentum*, Baro Baronie ne depart mie entre freres se leur pere ne leur a fait partie; mes li ainsnez doit faire avenant bienfet au puisné, et si doit les filles marier. Etablissement. de St. Louis, c. 24.

two-thirds, and received the homage of his brothers for the remaining part, which they divided. To the lord of whom the fief was held, himself did homage for the whole.\* In the early times of the feudal policy, when military service was the great object of the relation between lord and vassal, this, like all other sub-infeudation, was rather advantageous to the former. For, when the homage of a fief was divided, the service was diminished in proportion. Suppose, for example, the obligation of military attendance for an entire manor to have been forty days; if that came to be equally split among two, each would owe but a service of twenty. But if instead of being homagers to the same suzerain, one tenant held immediately of the other, as every feudatory might summon the aid of his own vassals, the superior lord would in fact obtain the service of both. Whatever opposition, therefore, was made to the rights of sub-infeudation or *fréage*, would indicate a decay in the military character, the living principle of feudal tenure. Accordingly in the reign of Philip Augustus, when the fabric was beginning to shake, we find a confederate agreement of some principal nobles, sanctioned by the king, to abrogate

\* This was also the law of Flanders and Hainault. Martenne, *Thesaurus Anecdotor.* t. i. p. 1092. The customs as to succession were exceedingly various, as indeed they continued to be until the late generalization of French law. *Recueil des Histor.* t. ii. préface, p. 108. *Hist. de Languedoc*, t. ii. p. 111. and 511. In the former work, it is said that primogeniture was introduced by the Normans from Scandinavia.

the mense tenure of younger brothers, and establish an immediate dependence of each upon the superior lord.\* This, however, was not universally adopted, and the original *fréage* subsisted to the last in some of the customs of France.†

3. As fiefs descended but to the posterity of the first taker, or at the utmost to his kindred, they necessarily became sometimes vacant for want of heirs; especially where, as in England, there was no power of devising them by will. In this case, it was obvious that they ought to revert to the lord, from whose property they had been derived. These reversions became more frequent through the forfeitures occasioned by the vassal's delinquency, either towards his superior lord, or the state. Various cases are laid down in the *Assises de Jérusalem*, where the vassal forfeits his land, for a year, for his life, or for ever.‡ But under rapacious kings, such as the Norman line in England, absolute forfeitures came to prevail, and a new doctrine was introduced, the corruption of blood, by which the heir was effectually excluded from deducing his title through an attainted ancestor.

4. Reliefs, fines upon alienation, and escheats, seem to be natural reservations in the lord's bounty to his vassal. He had rights of another class which especially arose out of fealty and intimate attachment. Such were the aids which he was entitled to call for in

\* *Ordonnances des Rois*, t. i. p. 29.

† Du Cange, *Dissert. III. sur Joinville*. Beauman. c. 47.

‡ C. 200, 201.



certain prescribed circumstances. These depended a great deal upon local custom, and were often extorted unreasonably. Du Cange mentions several as having existed in France; such as an aid for the lord's expedition to the Holy Land, for marrying his sister, or eldest son, and for paying a relief to his suzerain on taking possession of his land.\* Of these the last appears to have been the most usual in England. But this, and other aids occasionally exacted by the lords, were felt as a severe grievance; and by Magna Charta three only are retained; to make the lord's eldest son a knight, to marry his eldest daughter, and to redeem his person from prison. They were restricted to nearly the same description by a law of William I. of Sicily, and by the customs of France.† These feudal aids are deserving of our attention, as the beginnings of taxation, of which for a long time they in a great measure answered the purpose, till the craving necessities and covetous policy of kings substituted for them more durable and onerous burthens.

I might here, perhaps close the enumeration of feudal incidents, but that the two remaining, wardship and marriage, though only partial customs, were those of our own country, and tend to illustrate the rapacious character of a feudal aristocracy.

5. In England, and in Normandy which either suggested or shared in all these English institutions,

\* Du Cange, voc. Auxilium.

† Giannone, l. xii. c. 5. Velly, t. vi. p. 200. Ordonnances des Rois, t. i. p. 138. t. xvi. préface.

the lord had the wardship of his tenant during minority.\* By virtue of his right, he had both the care of his person, and received to his own use the profits of the estate. There is something in this custom very conformable to the feudal spirit; since none was so fit as the lord to train up his vassal to arms; and none could put in so good a claim to enjoy the fief, while the military service for which it had been granted was suspended. This privilege of guardianship seems to have been enjoyed by the lord in some parts of Germany:† but in the law of France, the custody of the land was entrusted to the next heir, and that of the person, as in socage tenures among us, to the nearest kindred of that blood which could not inherit.‡ By a gross abuse of the custom

\* Recueil des Historiens, t. xi. préf. p. 162. Argou, *Inst. au Droit François*, l. i. c. 6. Houard, *Anciennes Loix des François*, t. i. p. 147.

† Schilter, *Institutiones Juris Feudalis*, p. 85.

‡ Du Cange, v. *Custodia*. *Assises de Jérusalem*, c. 178. *Establissemens de St. Louis*. c. 17. *Beaùmanoir*, c. 15. Argou, l. i. c. 6. The second of these uses nearly the same expression as Sir John Fostescue in accounting for the exclusion of the next heir from guardianship of the person; that *mauvaise convoitise li fairoit garde du loup*.

I know not any mistake more usual in English writers who have treated of the feudal law, than that of supposing, that guardianship in chivalry was an universal custom. A charter of 1198, in Rymer, t. i. p. 105. seems indeed to imply that the incidents of *garde noble* and of marriage existed in the isle of Oleron. But Eleanor, by a later instrument, grants that the inhabitants of that island should have the wardship and marriage of their heirs without any interposition, and expressly abrogates all the evil customs that her husband had introduced. p. 112. From hence I should infer, that Henry II. had en-

in England, the right of guardianship in chivalry, or temporary possession of the lands, was assigned over to strangers. This was one of the most vexatious parts of our feudal tenures, and was never perhaps more sorely felt, than in their last stage under the Tudor and Stuart families.

6. Another right given to the lord by the Norman and English laws was that of marriage, or of tendering a husband to his female wards, while under age, whom they could not reject without forfeiting the value of the marriage; that is, as much as any one would give to the guardian for such an alliance. This was afterwards extended to male wards; and became a very lucrative source of extortion to the crown, as well as to mesne lords. This custom seems to have had the same extent as wardships. It is found in the ancient books of Germany, but not of France.\*

deavoured to impose the feudal burthens (which perhaps were then new even in England) upon his continental dominions. Radulphus de Diceto tells us of a claim made by him to the wardship of Chateauroux in Berry, which could not legally have been subject to that custom. Twysden, X. Scriptores, p. 599. And he set up pretensions to the custody of the duchy of Britany, after the death of his son Geoffrey. This might perhaps be justified by the law of Normandy, on which Britany depended. But Philip Augustus made a similar claim. In fact, these political assertions of right, prompted by ambition, supported by force, are bad precedents to establish rules of jurisprudence upon. Both Philip and Henry were abundantly disposed to realize so convenient a prerogative, as that of guardianship in chivalry over the fiefs of their vassals. Lyttleton's Henry II. vol. iii. p. 441.

\* Schilter, *ubi supra*. Du Cange, *voc Disparagare*, seems to admit this feudal right in France; but the passage he quotes do not support it. See also the word, Maritagium.

The kings, however, and even inferior lords of that country, required their consent to be solicited for the marriage of their vassals' daughters. Several proofs of this occur in the history, as well as in the laws, of France; and the same prerogative existed in Germany, Sicily, and England.\* A still more remarkable law prevailed in the kingdom of Jerusalem. The lord might summon any female vassal to accept one of three, whom he should propose, as her husband. No other condition seems to have been imposed on him in selecting these suitors, than that they should be of equal rank with herself. Neither the maiden's coyness, nor the widow's affliction, neither aversion to the proffered candidates, nor love to one more favoured, seem to have passed as legitimate excuses. One, only one plea, could come from the lady's mouth, who was resolute to hold her land in single blessedness. It was, that she was past sixty years of age; and after this unwelcome confession, it is justly argued, by the author of the law book which I quote, that the lord could not decently press her into matrimony.† However outrageous such an usage

\* *Ordonnances des Rois*, t. i. p. 155. *Assises de Jérus.* c. 180. and *Thaumassière's* note. *Du Cange*, ubi supra. *Glanvil*, l. vii. c. 12. *Giannone*, l. xi. c. 5. *Wright on Tenures*, p. 94. St. Louis in return, declared that he would not marry his own daughter without the consent of his barons. *Joinville*, t. ii. p. 140. Henry I. of England had promised the same. The guardian of a female minor was obliged to give security to her lord not to marry her without his consent. *Etablissements de St. Louis*, c. 63.

† *Ass. de Jérus.* c. 224. I must observe, that *Lauriere* says this usage prevailed en plusieurs lieux, though he quotes no authority. *Ordonnances des Rois*, p. 155.

may appear to our ideas, it is to be recollected that the peculiar circumstances of that little state rendered it indispensable to possess in every fief a proper vassal to fulfil the duties of war.

These feudal servitudes distinguish the maturity of the system. No trace of them appears in the capitularies of Charlemagne and his family, nor in the instruments by which benefices were granted. I believe that they did not make part of the regular feudal law before eleventh, or perhaps the twelfth, century, though doubtless partial usages of this kind had grown up antecedently to either of those periods. If I am not mistaken, no allusion occurs to the lucrative rights of seigniorship in the Assises de Jérusalem, which are a monument of French usages in the eleventh century. Indeed that very general commutation of alodial property into tenure, which took place between the middle of the ninth and eleventh centuries, would hardly have been effected, if fiefs had then been liable to such burthens and so much extortion. In half-barbarous ages, the strong are constantly encroaching upon the weak; a truth, which, if it needed illustration, might find it in the progress of the feudal system.

We have thus far confined our enquiry to fiefs holden on terms of military service: since those are the most ancient and regular, as well as the most consonant to the spirit of the system. They alone were called proper feuds, and all were presumed to be of this description, until the contrary was proved by the charter of investiture. A proper feud was

bestowed without price, without fixed stipulations, upon a vassal capable of serving personally in the field. But gradually, with the help of a little legal ingenuity, improper fiefs of the most various kinds were introduced, retaining little of the characteristics and less of the spirit which distinguished the original tenures. Women, if indeed that were an innovation, were admitted to inherit them;\* they were granted for a price, and without reference to military service. The language of the feudal law was applied by a kind of metaphor to almost every transfer of property. Hence, pensions of money, and allowances of provisions, however remote from right notions of a fief, were sometimes granted under that name: and even where land was the subject of the donation, its conditions were often lucrative, often honorary, and sometimes ludicrous.†

There is one extensive species of feudal tenure which may be distinctly noticed. The pride of wealth in the middle ages was principally exhibited in a multitude of dependants. The court of Charle-

\* Women did not inherit fiefs in the German empire. Whether they were ever excluded from succession in France, I know not; the genius of a military tenure, and the old Teutonic customs, preserved in the Salic law, seem adverse to their possession of feudal lands; yet the practice, at least from the eleventh century downwards, does not support the theory.

† Crag. Jus Feudale, l. i. tit. 10. Du Cange, voc. Feudum de Camera, &c. In the treaty between Henry I. of England and Robert count of Flanders, A. D. 1101, the king stipulates to pay annually 400 marks of silver, *in feodo*, for the military service of his ally. Rymer, Fœdera, t. i. p. 2.

magne was crowded with officers of every rank, some of the most eminent of whom exercised functions about the royal person, which would have been thought fit only for slaves in the palace of Augustus or Antonine. The free born Franks saw nothing menial in the titles of cup-bearer, steward, marshal, and master of the horse, which are still borne by the noblest families in every country of Europe, and by sovereign princes in the Empire. From the court of the king, this favourite piece of magnificence descended to those of the prelates and barons, who surrounded themselves with household officers called ministerials: a name equally applied to those of a servile and of a liberal description.\* The latter of these were rewarded with grants of lands, which they held under a feudal tenure by the condition of performing some domestic service to the lord. What was called in our law *grand serjeanty* affords an instance of this species of fief.† It is, however, an instance of the noblest kind; but Muratori has given abundance of proofs, that the commonest mechanical arts were carried on in the houses of the great, by persons receiving lands upon those conditions.‡

\* Schmidt, *Hist. des Allemands*, t. iii. p. 92. Du Cange, v. *Familia, Ministeriales*.

† "This tenure," says Littleton, "is where a man holds his lands or tenements of our sovereign lord the king by such services as he ought to do in his proper person to the king, as to carry the banner of the king, or his lance, or to lead his array, or to be his marshal, or to carry his sword before him at his coronation, or his carver, or his butler, or to be one of his chamberlains at the receipt of his exchequer, or to do other like services." Sect. 153.

‡ *Antiq. Ital. Dissert.* 11. ad finem.

These imperfect feuds, however, belong more properly to the history of law, and are chiefly noticed in the present sketch, because they attest the partiality manifested during the middle ages to the name and form of a feudal tenure. In the regular military fief we see the real principle of the system, which might originally have been defined ; an alliance of free land-holders arranged in degrees of subordination according to their respective capacities of affording mutual support.

The peculiar and varied attributes of feudal tenures naturally gave rise to a new jurisprudence, regulating territorial rights in those parts of Europe which had adopted the system. For a length of time, this rested in traditionary customs, observed in the domains of each prince or lord, without much regard to those of his neighbours. Laws were made occasionally by the emperor in Germany and Italy, which tended to fix the usages of those countries. About the 1170, Girard and Obertus, two Milanese lawyers, published two books of the law of fiefs, which obtained a great authority, and have been regarded as the ground-work of that jurisprudence.\* A number of subsequent commentators swelled this code with their glosses and opinions, to enlighten or obscure the judgement of the imperial tribunals. These were chiefly civilians or canonists, who brought to the interpretations of old barbaric customs the principles of a very different school. Hence a manifest

\* Giannone, *Ist. di Napoli*, l. xiii. c. 3. The *Libri Feudorum* are printed in most editions of the *Corpus Juris Civilis*.



change was wrought in the law of feudal tenure, which they assimilated to the usufruct or the emphyteusis of the Roman code; modes of property somewhat analogous in appearance, but totally distinct in principle from the legitimate fief. These Lombard lawyers propagated a doctrine, which has been too readily received, that the feudal system originated in their country; and some writers upon jurisprudence, such as Duck and Sir James Craig, incline to give a preponderating authority to their code. But whatever weight it may have possessed within the limits of the empire, a different guide must be followed to the ancient customs of France and England.\* These were fresh from the fountain of that curious polity, with which the stream of Roman law had never mingled its waters. In England, we know that the Norman system, established between the conquest and the reign of Henry II., was restrained by regular legislation, by paramount courts of justice, and by learned writings, from breaking into discordant local usages, except in a comparatively small number of places, and has become the principal source of our common law. But the independence of the French nobles produced a much greater variety

\* Giannone explicitly contrasts the French and Lombard laws respecting fiefs. The latter was the foundation of the *Libri Feudorum*, and formed the common law of Italy. The former was introduced by Roger Guiscard into his dominions, in three books of constitutions, printed in Lindebrog's collection. There were several material differences, which Giannone enumerates, especially the Norman custom of primogeniture. *Ist. di Nap.* l. xi. c. 5.

of customs. The whole number collected and reduced to certainty in the sixteenth century amounted to two hundred and eighty-five, or, omitting those inconsiderable for extent or peculiarity, to sixty. The earliest written customary in France is that of Bearn, which is said to have been confirmed by Viscount Gaston IV. in 1088.\* Many others were written in the two subsequent ages, of which the customs of Beauvoisis, compiled by Beaumanoir under Philip III., are the most celebrated, and contain a mass of information on the feudal constitution and manners. Under Charles VII., an ordinance was made for the formation of a general code of customary law, by ascertaining for ever in a written collection those of each district; but the work was not completed till the reign of Charles IX. This was what may be called the common law of the *pays coutumiers*, or northern division of France, and the rule of all their tribunals, unless where controuled by royal edicts.

\* There are two editions of this curious old code; one at Pau, in 1552, republished with a fresh title-page and permission of Henry IV., in 1602; the other at Lescars, in 1633. These laws, as we read them, are subsequent to a revision made in the middle of the sixteenth century, in which they were more or less corrected. The basis, however, is unquestionably very ancient. We even find the composition for homicide preserved in them; so that murder was not a capital offence in Bearn, though robbery was such. Rubrica de Homicidis, Art. xxxi. See too Rubrica de Penas, Art. i. and ii.

## PART II.

*Analysis of the Feudal System—Its local extent—View of the different Orders of Society during the Feudal Ages—Nobility—Their Ranks and Privileges—Clergy—Freemen—Serfs or Villeins—Comparative state of France and Germany—Privileges enjoyed by the French Vassals—Right of coining Money—And of private War—Immunity from Taxation—Historical View of the Royal Revenue in France—Methods adopted to augment it by depreciation of the Coin, &c—Legislative power—Its state under the Merovingian Kings—and Charlemagne—His Councils—Suspension of any general Legislative Authority during the prevalence of Feudal Principles—The King's Council—Means adopted to supply the want of a National Assembly—Gradual Progress of the King's Legislative Power—Philip IV. assembles the States General—Their Powers limited to Taxation—States under the Sons of Philip IV.—States of 1355 and 1356—They nearly effect an entire Revolution—The Crown recovers its vigour—States of 1380, under Charles VI.—Subsequent Assemblies under Charles VI. and Charles VII.—The Crown becomes more and more absolute—Louis XI.—States of Tours in 1484—Historical View of Jurisdiction in France—Its earliest stage under the first race of Kings, and Charlemagne—Territorial Jurisdiction—Feudal Courts of Justice—Trial by Combat—Code of St. Louis—The Territorial Jurisdictions give way—Progress of the Judicial Power of the Crown—Parliament of Paris—Peers of France—Increased Authority of the Parliament—Registration of Edicts—Causes of the Decline of Feudal System—Acquisitions of Domain by the Crown—Charters of Incorporation granted to Towns—Their previous condition—First Charters in the*

*twelfth Century—Privileges contained in them—Military Service of Feudal Tenants commuted for Money—Hired Troops—Change in the Military System of Europe—General View of the advantages and disadvantages attending the Feudal System.*

IT has been very common to seek for the origin of feuds, or at least for analogies to them, in the history of various countries. But, though it is of great importance to trace the similarity of customs in different parts of the world, because it guides us to the discovery of general theorems as to human society, yet we should be on our guard against seeming analogies, which vanish away when they are closely observed. It is easy to find partial resemblances to the feudal system. The relation of patron and client in the Roman republic is not unlike that of lord and vassal, in respect of mutual fidelity; but it was not founded upon the tenure of land, nor military service. The veteran soldiers, and, in later times, some barbarian allies of the emperors, received lands upon condition of public defence; but they were bound, not to an individual lord, but to the state. Such a resemblance to fiefs may be found in the Zemindaries of Hindostan, and the Timariots of Turkey. The clans of the Highlanders and Irish followed their chieftain into the field; but their tie was that of imagined kindred and respect for birth, not the spontaneous compact of vassalage. Much less can we extend the name of feud, though it is sometimes strangely misapplied, to the polity of

Poland and Russia. All the Polish nobles were equal in rights, and independent of each other; all who were less than noble, were in servitude. No government can be more opposite to the long gradations and mutual duties of the feudal system.\*

The regular machinery and systematic establishment of feuds, in fact, may be considered as almost confined to the dominions of Charlemagne, and to those countries which afterwards derived it from thence. In England, it can hardly be thought to have existed in a complete state before the conquest. Scotland, it is supposed, borrowed, it soon after from her neighbour. The Lombards of Benevento had introduced feudal customs into the Neapolitan provinces, which the Norman conquerors afterwards perfected. Feudal tenures were so general in the kingdom of Aragon, that I reckon it among the monarchies which were founded upon that basis.† Charlemagne's

\* In civil history many instances might be found of feudal ceremonies in countries not regulated by the feudal law. Thus Selden has published an infeudation of a *vayvod* of Moldavia by the king of Poland, A. D. 1485, in the regular forms. vol. iii. p. 514. But these political fiefs have hardly any connexion with the general system, and merely denote the subordination of one prince or people to another.

† It is probable, that feudal tenure was as ancient in the north of Spain, as in the contiguous provinces of France. But it seems to have chiefly prevailed in Aragon about the twelfth and thirteenth centuries, when the Moors south of the Ebro were subdued by the enterprize of private nobles, who, after conquering estates for themselves, did homage for them to the king. James I. upon the reduction of Valencia, granted lands by way of fief, on condition of defending that kingdom against the Moors, and residing personally upon the estate. Many

empire, it must be remembered, extended as far as the Ebro. But in Castile\* and Portugal they were very rare, and certainly could produce no political effect. Benefices for life were sometimes granted in the kingdoms of Denmark and Bohemia.† Neither of these,

did not perform this engagement, and were deprived of the lands in consequence. It appears by the testament of this monarch, that feudal tenures subsisted in every part of his dominions. Martenne, *Thesaurus Anecdotorum*, t. i. p. 1141. 1155. An edict of Peter II. in 1210 prohibits the alienation of *emphyteuses* without the lord's consent. It is hard to say, whether regular fiefs are meant by this word. De Marca, *Marca Hispanica*, p. 1396. This author says, that there were no *arriere-fiefs* in Catalonia.

The Aragonese fiefs appear however to have differed from those of other countries in some respects. Zurita mentions fiefs *according to the custom of Italy*, which he explains to be such as were liable to the usual feudal aids for marrying the lord's daughter, and other occasions. We may infer, therefore, that these prestations were not customary in Aragon. *Anales de Aragon*, t. ii. p. 62.

\* What is said of vassalage in Alfonso X.'s code, *Las siete partidas*, is short and obscure; nor am I certain, that it meant any thing more than *voluntary commendation*, the custom mentioned in the former part of this chapter, from which the vassal might depart at pleasure. See however Du Cange, v. Honor, where authorities are given for the existence of Castilian fiefs; and I have met with occasional mention of them in history. I believe that tenures of this kind were introduced in the fourteenth and fifteenth centuries; but not to any great extent. Marina, *Teoria de las Cortes*, t. iii. p. 14.

Tenures of a feudal nature, as I collect from Freirii *Institut. Juris Lusitani*, t. ii. tit. 1 and 3, existed in Portugal, though the jealousy of the crown prevented the system from being established. There were even territorial jurisdictions in that kingdom, not, as I apprehend, in Castile.

† *Daniæ regni politicus status*. Elzevir, 1629. Stransky, *Respublica Bohemica*. Ib. In one of the oldest Danish historians, Sweno, I have noticed his expression: *Waldemarus, patris tunc*

however, nor Sweden nor Hungary, come under the description of countries influenced by the feudal system.\* That system, however, after all these limitations, was so extensively diffused, that it might produce confusion, as well as prolixity, to pursue the collateral branches of its history in all the countries where it prevailed. But this embarrassment may be avoided without any loss, I trust of important information. The English constitution will find its place in another portion of these volumes; and the political condition of Italy, after the eleventh century, was not much affected, except in the kingdom of Naples, an inconsiderable object, by the laws of feudal tenure. I shall confine myself therefore, chiefly, to France and Germany; and far more to the former than the latter country. But it may be expedient first to contemplate the state of society in its various classes during the prevalence of feudal principles, before we trace their influence upon the national government.

potitus *feodo*. Langebek, Script. Rerum Danic. t. i. p. 62. By this he means the duchy of Sleswic, not a fief, but an honour or government possessed by Waldemar. Saxo Grammaticus calls it more classically, *paternæ præfecturæ dignitas*. Sleswic was, in later times, sometimes held as a fief; but this does not in the least imply that lands in Denmark proper were feudal, of which I find no evidence.

\* Though there were no feudal tenures in Sweden, yet the nobility and others were exempt from taxes on condition of serving the king with a horse and arms at their own expense; and a distinction was taken between *liber* and *tributarius*. But any one of the latter might become of the former class, or vice versâ. Sueciæ descriptio. Elzevir, 1631. p. 92.

It has been laid down already as most probable, that no proper aristocracy, except that of wealth, was known under the early kings of France ; and it was hinted that hereditary benefices, or, in other words, fiefs, might supply the link that was wanting between personal privileges and those of descent. The possessors of beneficiary estates were usually the richest and most conspicuous individuals in the state. They were immediately connected with the crown, and partakers in the exercise of justice and royal counsels. Their sons now came to inherit this eminence ; and, as fiefs were either inalienable, or at least not very frequently alienated, rich families were kept long in sight ; and, whether engaged in public affairs, or living with magnificence and hospitality at home, naturally drew to themselves popular estimation. The dukes and counts, who had changed their quality of governors into that of lords over the provinces intrusted to them, were at the head of this noble class. And in imitation of them, their own vassals, as well as those of the crown, and even rich alodialists, assumed titles from their towns or castles, and thus arose a number of petty counts, barons, and viscounts. This distant class of nobility became co-extensive with the fensual tenures. For the military tenant, however poor, was subject to no tribute, no prestation, but service in the field ; he was the companion of his lord in the sports and feasting of his castle, the peer of his court ; he fought on horseback, he was clad in the coat of mail, while the commonalty, if summoned at all to war, came on foot, and



with no armour of defence. As every thing in the habits of society, conspired with that prejudice, which, in spite of moral philosophers, will constantly raise the profession of arms above all others, it was a natural consequence, that a new species of aristocracy, founded upon the mixed considerations of birth, tenure, and occupation, sprung out of the feudal system. Every possessor of a fief was a gentleman, though he owned but few acres of land, and furnished his slender contribution towards the equipment of a knight. In the *Libri Feudorum*, indeed, those who were three degrees removed from the emperor in order of tenancy, are considered as ignoble;\* but this is restrained to modern investitures; and in France, where sub-infeudation was carried the farthest, no such distinction has met my observation.†

There still, however, wanted something to ascertain gentility of blood, where it was not marked by the actual tenure of land. This was supplied by two innovations devised in the eleventh and twelfth centuries; the adoption of surnames, and of armorial bearings. The first are commonly referred to the former age, when the nobility began to add the names of their estates to their own, or having any way acquired a distinctive appellation, transmitted it to their

\* L. ii. tit. 10.

† The nobility of an *alodial* possession, in France, depended upon its right to territorial jurisdiction. Hence there were *franc-aleux nobles*, and *franc-aleux roturiers*; the latter of which were subject to the jurisdiction of the neighbouring lord. Loiseau, *Traité des Seigneuries*, p. 76. Denisart, *Dictionnaire des Décisions*, art. *Franc-aleu*.

posterity.\* As to armorial bearings, there is no doubt that emblems somewhat similar have been immemorially used both in war and peace. The shields of ancient warriors, and devices upon coins or seals, bear no distant resemblance to modern blazonry. But the general introduction of such bearings, as hereditary distinctions, has been sometimes attributed to tournaments, wherein the champions were distinguished by fanciful devices; sometimes to the crusades, where a multitude of all nations and languages stood in need of some visible token to denote the banners of their respective chiefs. In fact, the peculiar symbols of heraldry point to both these sources, and have been borrowed in part from each.† Hereditary arms were perhaps scarcely used by private families before the beginning of the thirteenth century.‡ From that time, however, they became very

\* Mabillon, *Traité de Diplomatique*, l. ii. c. 7. The authors of the *Nouveau Traité de Diplomatique*, t. ii. p. 562. trace the use of surnames in a few instances even to the beginning of the tenth century; but they did not become general, according to them, till the thirteenth.

† *Mém. de l'Acad. des Inscriptions*, t. xx. p. 579.

‡ I should be unwilling to make a negative assertion peremptorily in a matter of mere antiquarian research; but I am not aware of any decisive evidence that hereditary arms were borne in the twelfth century, except by a very few royal or almost royal families. Mabillon, *Traité de Diplomatique*, l. ii. c. 18. Those of Geoffrey the Fair, count of Anjou, who died in 1150, are extant on his shield; azure, four lions rampant or. *Hist. Littéraire de la France*, t. ix. p. 165. If arms ha' been considered as hereditary at that time, this should be the bearing of England, which, as we all know, differs considerably. Louis VII sprinkled his seal and coin with fleurs de lys, a very ancient device, or rather ornament; and

general, and have contributed to elucidate that branch of history, whatever value we may assign to it, which regards the descent of illustrious families.

When the privileges of birth had thus been rendered capable of legitimate proof, they were enhanced in a great degree, and a line drawn between the high born and ignoble classes, almost as broad as that which separated liberty from servitude. All offices of trust and power were conferred on the former; those excepted, which appertained to the legal pro-

the same as what are sometimes called bees. The golden ornaments found in the tomb of Childeric I. at Tournay, which may be seen in the library of Paris, may pass either for fleurs de lys, or bees. Charles V. reduced the number to three, and thus fixed the arms of France. The counts of Toulouse used their cross in the twelfth age; but no other arms, Vaissette tells us, can be traced in Languedoc so far back. t. iii. p. 514.

Armorial bearings were in use among the Saracens during the later crusades; as appears by a passage in Joinville, t. i. p. 88. (*Collect. des Mémoires*) and Du Cange's note upon it. Perhaps however they may have been adopted in imitation of the Franks, like the ceremonies of knighthood. Villaret ingeniously conjectures, that the separation of different branches of the same family by their settlements in Palestine led to the use of hereditary arms, in order to preserve the connexion. t. xi. p. 113.

M. Sismondi, I observe, seems to entertain no doubt that the noble families of Pisa, including that whose name he bears, had their armorial distinctions in the beginning of the twelfth century. *Hist. des Républ. Ital.* t. i. p. 373. It is at least probable, that heraldic devices were as ancient in Italy as in any part of Europe. And the authors of *Nouveau Traité de Diplomatie*, t. iv. p. 388. incline to refer hereditary arms even in France to the beginning of the twelfth century; though without producing any evidence for this.

fession. A plebian could not posses a fief.\* Such at least was the original strictness : but as the aristocratic principle grew weaker, an indulgence was extended to heirs, and afterwards to purchasers.† They were even permitted to become noble by the acquisition, or at least by its possession for three generations.‡ But notwithstanding this ennobling quality of the land, which seems rather of an equivocal description, it became an established right of the crown to take, every twenty years, and on every change of the vassal, a fine, known by the name of

\* We have no English word that expresses the sense of *roturier*. How glorious is this deficiency in our political language, and how different are the ideas suggested by *commoner* ! *Roturier*, according to Du Cange, is derived from *rupturarius*, a peasant, *ab agrum rumpendo*.

† The establishments of St. Louis forbid this innovation, but Beaumanoir contends that the prohibition does not extend to descent or marriage. c. 48. The *roturier* who acquired a fief, if he challenged any one, fought with ignoble arms; but in all other respects was treated as a gentleman. *ibid*. Yet a knight was not obliged to do homage to the *roturier*, who became his superior by the acquisition of a fief on which he depended. Carpentier, *Supplement ad Du Cange*, *voc. Homagium*.

‡ *Etablissements de St. Louis*, c. 143. and note, in *Ordonnances des Rois*, t. i. See also preface to the same volume, p. xii. According to Mably, the possession of a fief did not cease to confer nobility (analogous to our barony by tenure) till the *Ordonnance de Blois* in 1579. *Observations sur l'Hist. de France*, l. iii. c. i. note 6. But Laurière, author of the preface above cited, refers to Bouteiller, a writer of the fourteenth century, to prove that no one could become noble without the king's authority. The contradiction will not much perplex us, when we reflect on the disposition of lawyers to ascribe all prerogatives to the crown, at the expense of territorial proprietors, and of ancient customary law.

franc-fief, from plebians in possession of land held by a noble tenure.\* A gentleman in France or Germany could not exercise any trade without derogating, that is, losing the advantages of his rank. A few exceptions were made, at least in the former country, in favour of some liberal arts, and of foreign commerce.† But in nothing does the feudal haughtiness of birth more shew itself, than in the disgrace which attended unequal marriages. No children could inherit a territory held immediately of the empire, unless both their parents belonged to the higher class of nobility. In France, the offspring of a gentleman by a plebian mother were reputed noble for the purposes of inheritance, and of exemption from tribute.‡ But they could not be received into any order of chivalry, though capable of simple knighthood; nor were they considered as any better than a bastard class, deeply tainted with the alloy of their maternal extraction. Many instances occur where letters of nobility have been granted to re-instate

\* The right, originally perhaps usurpation, called franc-fief, began under Philip the Fair. *Ordonnances des Rois*, t. i. p. 324. *Denisart*, Art. Franc-fief.

† Houard, *Dict. du Droit Normand*. *Encyclopédie*, Art. Noblesse. *Argou*, l. ii c. 2.

‡ Nobility, to a certain degree, was communicated through the mother alone, not only by the custom of Champagne, but in all parts of France; that is, the issue were *gentilhommes du fait de leur corps*, and could possess fiefs; but, says Beaumanoir, ‘la gentillesse par laquelle on devient chevalier, doit venir de par le père. c. 45. There was a proverbial maxim in French law, rather emphatic than decent, to express the derivation of gentility from the father, and of freedom from the mother.

them in their rank.\* For several purposes it was necessary to prove four, eight, sixteen, or a greater number of quarters, that is, of coats borne by paternal and maternal ancestors, and the same practice still subsists in Germany.

It appears, therefore, that the original nobility of the continent were, what we may call self created, and did not derive their rank from any such concessions of their respective sovereigns, as have been necessary in subsequent ages. In England, the baronies by tenure might belong to the same class, if the lands upon which they depended had not been granted by the crown. But the kings of France, before the end of the thirteenth century, began to assume a privilege of creating nobles by their own authority, and without regard to the tenure of land. Philip the hardy, in 1271, was the first French king who granted letters of nobility: under the reigns of Philip the Fair and his children they gradually became frequent.† This effected a change in the character of nobility: and had as obvious a moral, as other events of the same age had a political, influence, in diminishing the power and independence of the territorial aristocracy. The privileges originally connected with ancient lineage and extensive domains became common to the low-born creatures

\* Beaumanoir, c. 45. Du Cange, Dissert. 10 sur Joinville. Carpentier, voc. Nobilitatio.

† Velly, t. p. 432. Du Cange, and Carpentier, voc. Nobilitare, &c. Boulainvilliers, Hist. de l'ancien Gouvernement de France, t. i. p. 317.

of a court, and lost consequently part of their title to respect. The lawyers, as I have observed above, pretended that nobility could not exist without a royal concession. They acquired themselves, in return for their exaltation of prerogative, an official nobility by the exercise of magistracy. The institutions of chivalry again gave rise to a vast increase of gentlemen; knighthood, on whomsoever conferred by the sovereign being a sufficient passport to noble privileges. It was usual, perhaps, to grant previous letters of nobility to a plebian for whom the honour of knighthood was designed.

In this noble or gentle class there were several gradations. All those, in France, who held lands immediately depending upon the crown, whatever titles they might bear, were comprised in the order of baron. These were, originally, the peers of the king's court; they possessed the higher, as well as lower, territorial jurisdiction, and had the right of carrying their own banner into the field.\* To these corresponded the *Valvassores majores* and *Capitanei*

\* Beaumanoir, c. 34. Du Cange, v. Baro. *Etablissemens de St. Louis*, l. i. c. 24 l. ii. c. 36. The vassals of inferior lords were however called, improperly, Barons, both in France and England. *Recueil des Historiens*, t. xi. p. 300. Madox, *Baronia Anglica*, p. 133. In perfect strictness, those only, whose immediate tenure of the crown was older than the accession of Hugh Capet, were barons of France; namely, Bourbon, Coucy, and Beaujeu, or Beaujolois. It appears, however, by a register in the reign of Philip Augustus, that fifty-nine were reckoned in that class; confounding the feudataries of the Capetian fiefs, Paris and Orleans, with the original vassals of the crown. Du Cange, voc. Baro.

of the empire. In a subordinate class were the vassals of this high nobility, who, upon the continent, were usually termed Vavassors: an appellation not unknown, though rare in England.\* The Chate-lains belonged to the order of Vavassors, as they held only *arriere fiefs*; but having fortified houses, from which they derived their name, (a distinction very important in those times,) and possessing ampler rights of territorial justice, they seemed to raise themselves above the level of their fellows in the scale of tenure.† But, after the personal nobility of chivalry became the object of pride, the Vavassors, who obtained knighthood, were commonly styled

\* Du Cange, v. Vavassor, Velly, t. vi. p. 151. Madox, *Baronia Anglica*, p. 135. There is, perhaps, hardly any word more loosely used than Vavassor. Bracton says, *Sunt etiam Vavassores, magnæ dignitatis viri*. In France and Germany, they are sometimes named with much less honour. *Je suis un chevalier nè de cest part, de vavaseurs et de basse gent*, says a romance. This is to be explained by the poverty to which the subdivision of fiefs reduced idle gentlemen.

† Du Cange, v. Castellanus, *Coûtumes de Poitou*, tit. iii. Loiseau, *Traité des Seigneuries*, p. 160. Whoever had a right to a castle had *la haute justice*; this being so incident to the castle, that it was transferred along with it. There might however be a *Seigneur haut-justicier* below the *Châtelain*; and a ridiculous distinction was made as to the number of posts by which their gallows might be supported. A baron's instrument of execution stood on four posts; a *châtelain's* on three; while the inferior lord, who happened to possess *la haute justice*, was forced to hang his subjects on a two-legged machine. *Coûtumes de Poitou*. De Cange, v. Furca.

Laurière quotes from an old manuscript the following short scale of ranks. Duc est la première dignité, puis comtes, puis viscomtes, et puis baron, et puis châtelain, et puis vavasseur, et puis citaien, et puis villain. *Ordonnances des Rois*, t. i. p. 277.



bachelors ; those who had not received that honour fell into the class of squires,\* or damoiseaux.

It will be needless to dwell upon the condition of the inferior clergy, whether secular or professed, as it bears little upon the general scheme of polity. The prelates and abbots, however, it must be understood, were completely feudal nobles. They swore fealty for their lands to the king or other superior, received the homage of their vassals, enjoyed the same immunities, exercised the same jurisdiction, maintained the same authority, as the lay lords among whom they dwelt. Military service does not appear to have been reserved in the beneficiary grants made to cathedrals and monasteries. But, when other vassals of the crown were called upon to repay the bounty of their sovereign by personal attendance in war, the ecclesiastical tenants were supposed to fall within the scope of this feudal duty, which men, little less uneducated and violent than their compatriots, were not reluctant to fulfil. Charlemagne ex-

\* The sons of knights, and gentlemen not yet knighted, took the appellation of squires in the twelfth century. Vaissette, *Hist. de Lang.* t. ii. p. 513. That of Damoiseau came into use in the thirteenth. *Id.* t. iii. p. 529. The latter was, I think, more usual in France. Du Cange gives little information as to the word squire. (*Scutifer*). ‘*Apud Anglos,*’ he says, ‘*penultima est nobilitatis descriptio, inter Equitem and Generosum. Quod et alibi in usu fuit.*’ Squire was not used as a title of distinction in England, till the reign of Edward III. and then but sparingly. Though by Henry VI.’s time it was grown common, yet none assumed it but the sons and heirs of knights, and some military men; except officers in courts of justice, who, by patent or prescription, had obtained that addition. Spelman’s *Posthumous Works*, p. 234.

empted or rather prohibited them from personal service by several capitularies.\* The practice, however, as every one who has some knowledge of history will be aware, prevailed in succeeding ages. Both in national and private warfare, we find very frequent mention of martial prelates.† But contrary as this actual service might be to the civil as well as ecclesiastical laws, the clergy who held military fiefs were of course bound to fulfil the chief obligation of that tenure, and send their vassals into the field. We have many instances of their accompanying the army, though not mixing in the conflict; and even the parish-priests headed the militia of their villages.‡ The prelates however sometimes contrived to avoid this military service, and the payments introduced in commutation for it, by holding lands in frank-almoigne, a tenure which exempted them from every species of obligation, except that of saying masses for the benefit of the grantor's family.§ But, notwithstanding the warlike disposition of some ecclesiastics, their more usual inability to protect the

\* Mably, l. i. c. 5. Baluze, t. i. p. 410. 932. 987. Any bishop, priest, deacon, or subdeacon bearing arms was to be degraded, and not even admitted to lay communion. Id. p. 932.

† One of the latest instances of a fighting bishop is Jean Montaigu, archbishop of Sens, who was killed at Agincourt. Monstrelet says, that he was 'non pas en estat pontifical, car au lieu de mitre il portoit une bacinet, pour dalmatique portoit un haubergeon, pour chasuble la piece d'acier; et au lieu de crosse, portoit une hache.' fol. 132.

‡ Daniel, Hist. de la Milice Françoise, t. i. p. 88.

§ Du Cange, Eleemosyna Libera. Madox, Baronia Angli. p. 115. Coke on Littleton, and other English law-books.

estates of their churches against rapacious neighbours suggested a new species of feudal relation and tenure. The rich abbeys elected an advocate, whose business it was to defend their interests both in secular courts, and, if necessary, in the field. Pepin and Charlemagne are styled Advocates of the Roman church. This indeed was on a magnificent scale; but in ordinary practice, the advocate of a monastery was some neighbouring lord, who, in return for his protection, possessed many lucrative privileges, and, very frequently, considerable estates by way of fief from his ecclesiastical clients. Some of these advocates are reproached with violating their obligation, and becoming the plunderers of those whom they had been retained to defend.\*

The classes below the gentry may be divided into freemen and villeins. Of the first were the inhabitants of chartered towns, the citizens and burghers, of whom more will be said presently. As to those who dwelt in the country, we can have no difficulty in recognizing, so far as England is concerned, the socagers, whose tenure was free, though not so noble as knight's service, and a numerous body of tenants for term of life, who formed that ancient basis of our strength, the English yeomanry. But the mere freemen are not at first sight so distinguishable in other countries. In French records and law books of feudal times, all besides the gentry are usually con-

\* Du Cange, v. *Advocatus*; a full and useful article. *Recueil des Historiens*, t. xi. préface, p. 184.

founded under the names of villeins or *hommes de pooste*, (*gens potestatis*.\*) This proves the slight estimation in which all persons of ignoble birth were considered. For undoubtedly there existed a great many proprietors of land and others, as free, though not as privileged, as the nobility. In the south of France, and especially Provence, the number of freemen is remarked to have been greater than in the parts on the right bank of the Loire, where the feudal tenures were almost universal.† Muratori mentions a sort of people in Italy, called *Arimanni*, who, though the name is somewhat obscure, seem to have been in a middle station, either cultivators of their own land, or free tenants of a superior.‡ I shall quote part of a passage in *Beaumanoir*, which points out this distinction of ranks pretty fully. “It should be known, he says,§ that there are three conditions of men in this world; the first, is that of gentlemen;

\* *Homo potestatis, non nobilis*—Ita nuncupantur, quod in potestate domini sunt—Opponuntur viris nobilibus; apud Butilerium *Consuetudinarii* vocantur, *Coastumiers*, *prestationibus* scilicet *obnoxii* et *operis*. Du Cange, v. *Potestas*. As all these freemen were obliged, by the ancient laws of France, to live under the protection of some particular lord, and found great difficulty in choosing a new place of residence, as they were subject to many tributes and oppressive claims on the part of their territorial superiors, we cannot be surprised that they are confounded, at this distance, with men in actual servitude.

† Heeren, *Essai sur les Croisades*, p. 122.

‡ Murat. *Antiq. Ital. Dissert.* 13. Robertson has confounded these *arimanni* with *originarii* and *conditionales*, who were not freemen. *Hist.* Ch. V. vol. i. not. 9.

§ *Coatumes de Beauvoisis*, c. 45. p. 256.

and the second, is that of such as are naturally free, being born of a free mother. All who have a right to be called gentlemen are free, but all who are free, are not gentlemen. Gentility comes by the father, and not by the mother; but freedom is derived from the mother only: and whoever is born of a free mother, is himself free, and has free power to do any thing that is lawful."

In every age and country, until times comparatively recent, personal servitude appears to have been the lot of a large, perhaps the greater, portion of mankind. We lose a good deal of our sympathy with the spirit of freedom in Greece and Rome, when the importunate recollection occurs to us, of the tasks which might be enjoined, and the punishments which might be inflicted, without controul either of law or opinion, by the keenest patriot of the Comitia, or the Council of Five Thousand. A similar, though less powerful feeling will often force itself on the mind, when we read the history of the middle ages. The Germans, in their primitive settlements, were accustomed to the notion of slavery, incurred not only by captivity, but by crimes, by debt, and especially by loss in gaming. When they invaded the Roman empire, they found the same condition established in all its provinces. Hence, from the beginning of the æra now under review, servitude, under somewhat different modes, was extremely common. There is some difficulty in ascertaining its varieties and stages. In the Salic laws, and in the Capitularies, we read not only of

Servi, but of Tributarii, Lidi, and Coloni, who were cultivators of the earth, and subject to residence upon their master's estate, though not destitute of property, or civil rights.\* Those who appertained to the demesne lands of the crown were called Fiscalini. The composition for the murder of one of these was much less than that for a freeman.† The number of these servile cultivators was undoubtedly great, yet in those early times, I should conceive,

\* These passages are too numerous for reference. In a very early charter in Martenne's *Thesaurus Anecdotorum*, t. i. p. 20. lands are granted, cum hominibus ibidem permanentibus, quos *colonario ordine vivere* constituimus. Men of this class were called in Italy Aldiones. A Lombard capitulary of Charlemagne says: Aldiones eá lege vivunt in Italiâ sub servitute dominorum suorum, quâ Fiscalini, vel Lidi vivunt in Franciâ. Muratori, *Dissert.* 14.

† Originally it was but 45 solidi. *Leges Salicæ*, c. 43. but Charlemagne raised it to 100. *Baluzii Capitularia*, p. 402. There are several provisions in the laws of this great and wise monarch in favour of liberty. If a lord claimed any one either as his villein or slave, (*colonus sive servus*,) who had escaped beyond his territory, he was not to be given up till strict inquiry had been made in the place to which he was asserted to belong, as to his condition, and that of his family. p. 400. And if the villein shewed a charter of enfranchisement, the proof of its forgery was to lie upon the lord. No man's liberty could be questioned in the Hundred-court.

Yet whatever tendency the law might shew towards encouraging the manumission of slaves, it treated them, while in servitude, with the unfeeling indifference of the Roman code, from which, perhaps, the following provision is borrowed. Si quis servum injustè accusaverit alienum, et tormenta innocentem pertulerit, domino simile mancipium pro hoc furto reddat. Si vero innocens in tormento mortuus fuerit, duos servos ejusdem meriti sine dilatione domino restituat. *Baluzii Capitularia*, p. 900. There is nothing at Barbadoes equal to this.

much less than it afterwards became. Property was for the most part in small divisions, and a Frank who could hardly support his family upon a petty alodial patrimony was not likely to encumber himself with many servants. But the accumulation of overgrown private wealth had a natural tendency to make slavery more frequent. Where the small proprietors lost their lands by mere rapine, we may believe that their liberty was hardly less endangered.\* Even where this was not the case, yet as the labour either of artizans or of free husbandmen was but sparingly in demand, they were often compelled to exchange their liberty for bread.† In seasons also of famine, and they were not unfrequent, many free-men sold themselves into slavery. A capitulary of Charles the Bald in 864 permits their redemption at an equitable price‡ Others became slaves, as more fortunate men became vassals, to a powerful lord, for the sake of his protection. Many were reduced into this state through inability to pay those pecuniary compositions for offences, which were numerous and sometimes heavy in the barbarian codes of law; and many more by neglect of attendance

\* Montesquieu ascribes the increase of personal servitude in France to the continual revolts and commotions under the two first dynasties. l. xxx c. 11.

† Du Cange, v. Obnoxio.

‡ Baluz. Capitularia. The Greek traders purchased famished wretches on the coasts of Italy, whom they sold to the Saracens. Muratori, Annali d'Italia. A. D. 785. Much more would persons in this extremity sell themselves to neighbouring lords.

on military expeditions of the king, the penalty of which was a fine called *Heribann*, with the alternative of perpetual servitude.\* A source of loss of liberty which may strike us as more extraordinary was superstition; men were infatuated enough to surrender themselves, as well as their properties, to churches and monasteries, in return for such benefit as they might reap by the prayers of their new masters.†

The characteristic distinction of a villein was his obligation to remain upon his lord's estate. He was not only precluded from selling the lands upon which he dwelt; but his person was bound, and the lord might reclaim him at any time, by suit in a court of justice, if he ventured to stray. But, equally liable to this confinement, there were two classes of villeins, whose condition was exceedingly different. In England, at least from the reign of Henry II., one only, and that the inferior species, existed; incapable of property, and destitute of redress, except against the most outrageous injuries.‡ The lord could seize whatever they acquired or inherited, or convey them, apart from the land, to a stranger. Their tenure bound them to what were called villein services, ig-

\* Du Cange, *Heribannum*. A full *heribannum* was 60 *solidi*; but it was sometimes assessed in proportion to the wealth of the party.

† Beaumanoir, c. 45.

‡ Littleton, l. ii. c. 11. *Non potes aliquis, (says Glanvil,) in villenagio positus, libertatem suam propriis denariis suis quærere—quia omnia catalla cujuslibet nativi intelliguntur esse in potestate domini sui. l. v. c. 5.*



noble in their nature, and indeterminate in their degree ; the felling of timber, the carrying of manure, the repairing of roads for their lord, who seems to have possessed an equally unbounded right over their labour and its fruits. But by the customs of France and Germany, persons in this abject state seem to have been called serfs, and distinguished from villeins, who were only bound to fixed payments and duties in respect of their lord, though, as it seems, without any legal redress, if injured by him.\* “ The third state of men, says Beaumanoir, in the passage above quoted, is that of such as are not free ; and these are not all of one condition, for some are so subject to their lord, that he may take all they have, alive or dead, and imprison him whenever he pleases, being accountable to none but God ; while others are treated more gently, from whom the lord can take nothing but customary payments, though at their death all they have escheats to him.”\*

\* This is clearly expressed in a French law book of the thirteenth century, the *Conseil* of Pierre des Fontaines, quoted by Du Cange, *voc. Villanus*. *Et sache bien que selon Dieu tu n'as mie pleniére poesté sur ton vilain. Dont se tu prens du sien fors les droites redevances, que te doit, tu les prens contre Dieu, et sur le peril de t'ame et come robierres. Et ce qu'on dit toutes les choses que vilains a, sont au Seigneur, c'est voirs a garder. Car s'il estoient son seigneur propre, il n'avoit nule difference entre serf et vilain, mais par notre usage n'a entre toi et ton vilain juge fors Dieu, tant com il est tes couchans et tes levans, s'il n'a autre loi vers toi fors la commune.* This seems to render the distinction little more than theoretical.

† Beaumanoir, c. 45. Du Cange, *Villanus*, *Servus*, and several other articles. Schmidt, *Hist. des Allemands*, t. ii.

Under every denomination of servitude, the children followed their mother's condition; except in England, where the father's state determined that of the children; on which account bastards of female villeins were born free; the law presuming the liberty of their father.\* The proportion of freemen, therefore, would have been miserably diminished, if there had been no reflux of the tide, which ran so strongly towards slavery. But the usage of manumission made a sort of circulation between these two states of mankind. This, as is well known, was an exceedingly common practice with the Romans; and is

p. 171. 435. By a law of the Lombards, a free woman who married a slave might be killed by her relations, or sold; if they neglected to do so, the fisc might claim her as its own. Muratori, Dissert. 14. In France also, she was liable to be treated as a slave. Marculfi Formulæ, l. ii. 29. Even in the twelfth century, it was the law of Flanders, that whoever married a villein became one himself, after he had lived with her a twelve-month. Recueil des Historiens, t. xiii. p. 350. And, by a capitulary of Pepin, if a man married a villein believing her to be free, he might repudiate her and marry another. Baluze, p. 181.

Villeins themselves could not marry without the lord's licence, under the penalty of forfeiting their goods, or at least of a mulct. Du Cange, v. *Forismaritagium*. This seems to be the true origin of the famous *mercheta mulierum*, which has been ascribed to a very different custom. Du Cange, v. *Mercheta Mulierum*. Dalrymple's *Annals of Scotland*, vol. i. p. 312. *Archæologia*, vol. xii. p. 31.

\* Littleton, s 188. Bracton indeed holds, that the spurious issue of a nief, though by a free father, should be a villein, *quia sequitur conditionem matris, quasi vulgo conceptus*, l. i. c. 6. But the laws of Henry I. declare, that a son should follow his father's condition; so that this peculiarity is very ancient in our law. *Leges Hen. I. c. 75 and 77.*

mentioned, with certain ceremonies prescribed, in the Frankish and other early laws. The clergy, and especially several popes, enforced it as a duty upon laymen; and inveighed against the scandal of keeping Christians in bondage.\* But they were not, it is said, equally ready in performing their own parts; the villeins upon church lands were among the last who were emancipated.† As society advanced in Europe, the manumission of slaves grew more frequent.‡ By the indulgence of custom in some places, or perhaps by original convention, villeins might possess property, and thus purchase their own redemption. Even where they they had no legal title to property, it was accounted inhuman to divest them of their little possession, (the

\* Enfranchisements by testament are very common. Thus, in the will of Seniofred, count of Barcelona, in 966, we find the following piece of corrupt Latin: *de ipsos servos meos et ancillas, illi qui traditi fuerunt faciatis illos liberos propter remedium animæ meæ; et alii qui fuerunt de parentorum meorum remaneant ad fratres meos.* *Marca Hispanica*, p. 887.

† Schmidt, *Hist. des All.* t. i. p. 361. See however a charter of manumission from the chapter of Orleans, 1224, to all their slaves, under certain conditions of service. Martenne, *Thesaurus Anecd.* t. i. p. 914. Conditional manumissions were exceedingly common. Du Cange, v. *Manumissio*; a long article.

‡ No one could enfranchise his villein without the superior lord's consent; for this was to diminish the value of his land, *apeticer le fief*. Beaumanoir, c. 45. *Establissemens de St. Louis*, c. 34. It was necessary therefore for the villein to obtain the suzerain's confirmation; otherwise he only changed masters; and escheated, as it were, to the superior; for the lord who had granted the charter franchise was *estopped* from claiming him again.

peculium of Roman law,) nor was their poverty, perhaps, less tolerable upon the whole, than that of the modern peasantry in most countries of Europe. It was only in respect of his lord, it must be remembered, that the villein, at least in England, was without rights;\* he might inherit, purchase, sue in the courts of law; though, as defendant in a real action, he might shelter himself under the plea of villenage. The peasants of this condition were sometimes made use of in war, and rewarded with enfranchisement; especially in Italy, where the cities and petty states had often occasion to defend themselves with their whole population; and in peace the industry of free labourers must have been found more productive and better directed. Hence, the eleventh and twelfth centuries saw the number of slaves in Italy begin to decrease; early in the fifteenth, a writer quoted by Muratori speaks of them as no longer existing.† The greater part of the peasants in some countries of

\* Littleton, s. 189. Perhaps this is not applicable to other countries. Villeins were incapable of being received as witnesses against freemen. *Recueil des Historiens*, t. xiv. préface, p. 65. There are some charters of kings of France admitting the serfs of particular monasteries to give evidence, or to engage in the judicial combat, against freemen. *Ordonnances des Rois*, t. i. p. 3. But I do not know that their testimony, except against their lord, was ever refused in England; their state of servitude not being absolute, like that of negroes in the West Indies, but particular and relative, as that of an apprentice or hired servant. This subject, however, is not devoid of obscurity, and I may probably return to it in another place.

† Dissert. 14.

Germany had acquired their liberty before the end of the thirteenth century ; in other parts, as well as in all the northern and eastern regions of Europe, they remain in a sort of villenage to this day. Some very few instances of predial servitude have been discovered in England, so late as the time of Elizabeth,\* and perhaps they might be traced still lower. Louis Hutin, in France, after innumerable particular instances of manumission had taken place, by a general edict in 1315, reciting that his kingdom is denominated the kingdom of the Franks, that he would have the fact to correspond with the name, emancipates all persons in the royal domains upon paying a just composition, as an example for other lords possessing villeins to follow.† Philip the Long renewed the same edict three years afterwards ; a proof that it had not been carried into execution.‡ Indeed there are letters of the former prince, wherein, considering that many of his subjects are not apprized of the extent of the benefit conferred upon them, he directs his officers to tax them as high as their fortunes can well bear.§

\* Barrington's Observations on the ancient Statutes, p. 274. A book which every one must allow to be agreeable, though a severe critic will not always praise its accuracy.

† Ordonnances des Rois, t. i. p. 583.

‡ Id. p. 653.

§ Velly, t. viii. p. 38. Philip the Fair had emancipated the villeins in the royal domains throughout Languedoc, retaining only an annual rent for their lands, which thus become *censives*, or *emphyteuses*. It does not appear by the charter, that he sold this enfranchisement, though there can be little doubt about it. He permitted his vassals to follow the example. Vaissette, Hist. de Languedoc, t. iv. Appendix, p. 3 and 12

It is deserving of notice, that a distinction existed from very early times in the nature of lands, collateral, as it were, to that of persons. Thus we find

It is not generally known, I think, that predial servitude was not abolished in all parts of France till the revolution. In some places, says Pasquier, the peasants are *taillables à volonté*, that is, their contribution is not permanent, but assessed by the lord with the advice of *prud'hommes*, *resseants sur les lieux*, according to the peasants's ability. Others pay a fixed sum. Some are called *serfs de poursuite*, who cannot leave their habitations, but may be followed by the lord into any part of France for the *taille* upon their goods. This was the case in part of Champagne, and the Nivernois. Nor could these serfs, or *gens de mainmorte*, as they were sometimes called, be manumitted without letters patent of the king, purchased by a fine. *Recherches de la France*, l. iv. c. 5. Du Bos informs us, that in 1615, the *Tiers Etat* prayed the king to cause all serfs (*hommes de poote*) to be enfranchised on paying a composition; but this was not complied with, and they existed in many parts when he wrote. *Histoire Critique*, t. iii. p. 298. Argou, in his *Institutions de Droit François*, confirms this, and refers to the customaries of Nivernois and Vitry. l. i. c. l. And M. de Brèquigny, in his preface to the twelfth volume of the collection of *Ordonnances*, p. 22, says that throughout almost the whole jurisdiction of the parliament of Besançon, the peasants were attached to the soil, not being capable of leaving it without the lord's consent; and that in some places he even inherited their goods in exclusion of the kin. I recollect to have read in some part of Voltaire's correspondence, an anecdote of his interference, with that zeal against oppression, which is the shining side of his moral character, in behalf of some of these wretched slaves of Franche-comté.

About the middle of the fifteenth century, some Catalonian serfs who had escaped into France being claimed by their lords, the parliament of Toulouse declared, that every man who entered the kingdom, *en criant France*, should become free. The liberty of our kingdom is such, says Mezeray, that its air communicates freedom to those who breathe it, and our kings are too august to reign over any but freemen. Villaret, t. xv. p. 348. How much pretence Mezeray had for such a flourish, may be decided by the former part of this note.

*mansi ingenui* and *mansi serviles* in the oldest charters, corresponding to the *bockland* and *folkland* of the Anglo-Saxons, the *liberum tenementum* and *villenagium*, or freehold and copyhold of our later law. In France, all lands held in *roture* appear to be considered as villein tenements, and are so termed in Latin, though many of them rather answer to our socage freeholds. But, although originally this servile quality of lands was founded on the state of their occupiers, yet there was this particularity, that lands never changed their character along with that of the possessor; so that a nobleman might, and often did, hold estates in *roture*, as well as a *roturier* acquire a fief. Thus in England the *terre tenants* in villenage, who occur in our old books, were not villeins, but freemen holding lands which had been from time immemorial of a villein quality.

At the final separation of the French from the German branch of Charlemagne's empire by the treaty of Verdun in 843, there was perhaps hardly any difference in the constitution of the two kingdoms. If any might be conjectured to have existed, it would be a greater independence, and fuller rights of election in the nobility and people of Germany. But in the lapse of another century, France had lost all her political unity, and her kings all their authority; while the Germanic empire was entire and unbroken, under an effectual, though not absolute controul of its sovereign. No comparison can be made between the power of Charles the Simple and Conrad the First, though the former had the

shadow of an hereditary right and the latter was chosen from among his equals. A long succession of feeble princes or usurpers, and destructive incursions of Normans, reduced France almost to a dissolution of society ; while Germany, under Conrad, Henry, and the Othos, found their arms not less prompt and successful against revolted vassals, than external enemies. The high dignities were less completely hereditary than they had become in France ; they were granted indeed pretty regularly, but they were solicited as well as granted ; while the chief vassals of the French crown assumed them as patrimonial sovereignties, to which a royal investiture gave more of ornament than sanction.

In the eleventh century, these imperial prerogatives began to lose part of their lustre. The long struggles of the princes and clergy against Henry IV. and his son, the revival of more effective rights of election on the extinction of the house of Franconia, the exhausting contests of the Swabian emperors in Italy, the intrinsic weakness produced by a law of the empire, according to which the reigning sovereign could not retain an imperial fief more than a year in his hands, gradually prepared that independence of the German aristocracy, which reached its height about the middle of the thirteenth century. During this period the French crown had been insensibly gaining strength ; and as one monarch degenerated into the mere head of a confederacy, the other acquired unlimited power over a solid kingdom.

It would be tedious, and not very instructive, to



follow the details of German public law during the middle ages : nor are the more important parts of it easily separable from civil history. In this relation, they will find a place in a subsequent chapter of the present volume. France demands a more minute attention, and in tracing the character of the feudal system in that country, we shall find ourselves insensibly developing the progress of a very different polity.

To understand in what degree the peers and barons of France, during the prevalence of feudal principles, were independent of the crown, we must look at their leading privileges. These may be reckoned : 1. The right of coining money : 2. That of waging private war ; 3. The exemption from all public tributes, except the feudal aids ; 4. The freedom from legislative controul ; and, 5. The exclusive exercise of original judicature in their dominions. Privileges so enormous and so contrary to all principles of sovereignty, might lead us, in strictness, to account France rather a collection of states, partially allied to each other, than a single monarchy.

I Silver and gold were not very scarce in the first ages of the French monarchy ; but they passed more by weight, than by tale. A lax and ignorant government, which had not learned the lucrative mysteries of a royal mint, was not particularly solicitous to give its subjects the security of a known stamp in their exchanges.\* In some cities of France, money

\* The practice of keeping fine gold and silver uncoined, prevailed among private persons, as well as in the treasury,

appears to have been coined by private authority before the time of Charlemagne; at least one of his capitularies forbids the circulation of any that had not been stamped in the royal mint. His successors indulged some of their vassals with the privilege of coining money for the use of their own territories, but not without the royal stamp. About the beginning of the tenth century, however, the lords, among their other assumptions of independence, issued money with no marks but their own.\* At the accession of Hugh Capet, as many as a hundred and fifty are said to have exercised this power. Even under St. Louis, it was possessed by about eighty; who, excluding, as far as possible, the royal coin from circulation, enriched themselves at their subjects' expense by high duties (seniorages), which they imposed upon every new coinage, as well as by debasing its standard.† In 1185, Philip Augustus requests the abbot of Corvey, who had desisted from using his own mint, to let the royal money of Paris circulate through his territories; promising that

down to the time of Philip the Fair. Nothing is more common than to find, in the instruments of earlier times, payments or fines stipulated by weight of gold or silver. Le Blanc therefore thinks, that little money was coined in France, and that only for small payments. *Traité des Monnoyes*. It is curious, that though there are many gold coins extant of the first race of kings, yet few or none are preserved of the second or third, before the reign of Philip the Fair. Du Cange, v. *Moneta*.

\* Vaissette, *Hist. de Languedoc*, t. ii. p. 110. *Rec. des Historiens*, t. xi. préf. p. 180. Du Cange, v. *Moneta*.

† Le Blanc, *Traité des Monnoyes*, p. 91.

when it should please the abbot to coin money afresh for himself, the king would not oppose its circulation.\*

Several regulations were made by Louis IX. to limit, as far as lay in his power, the exercise of his baronial privilege; and, in particular, by enacting that the royal money should circulate in the domains of those barons who had mints, concurrently with their own; and exclusively within the territories of those who did not enjoy that right. Philip the Fair established royal officers of inspection in every private mint. It was asserted in his reign, as a general truth, that no subject might coin silver money.† In fact, the adulteration practised in those baronial mints had reduced their pretended silver to a sort of black metal, as it was called, (*moneta nigra*,) into which little entered but copper. Silver, however, and even gold were coined by the dukes of Britany so long as that fief continued to exist. No subjects

\* Du Cange, voc. *Moneta*. Velly, *Hist. de France*, t. ii. p. 93. Villaret, t. xiv. p. 200.

† Du Cangé, *ibid.* The right of debasing the coin was also claimed by this prince as a choice flower of his crown. Item, abaisser et amener la monnoye, est privilege especial au roy de son droit royal, si que a luy appartient, et non a autre, et encore en un seul cas, c'est a scavoir en necessité, et lors ne vient pas le ganeg ne convertit en sen profit especial, mais en profit, et en la defence du commun. This was in a process commenced by the king's procureur-général against the comte de Nevers, for defacing his coin. Le Blanc, *Traité des Monnoyes*, p. 92. In many places the lord took a sum from his tenants every three years, under the name of monetagium or focagium, in lieu of debasing his money. This was finally abolished in 1380. Du Cange, v. *Monetagium*

ever enjoyed the right of coining silver in England without the royal stamp and superintendence;\* a remarkable proof of the restraint in which the feudal aristocracy was always held in this country.

II. The passion of revenge, always among the most ungovernable in human nature, acts with such violence upon barbarians, that it is utterly beyond the controul of their imperfect arrangements of polity. It seems to them no part of the social compact, to sacrifice the privilege of which nature has placed in the arm of valour. Gradually, however, these fiercer feelings are blunted, and another passion, hardly less powerful than resentment, is brought to play in a contrary direction. The earlier object accordingly of jurisprudence is to establish a fixed atonement for injuries, as much for the preservation of tranquility as the prevention of crime. Such were the wergilds of the barbaric codes, which, for a different purpose, I have already mentioned.† But whether it were that the kindred did not always accept, or the criminal offer, the legal composition, or that other causes of quarrel occurred, private feuds (*faida*) were perpetually breaking out, and many of Charlemagne's capitularies are directed against them. After this time, all hope of restraining so inveterate

\* I do not extend this to the *fact*; for in the anarchy of Stephen's reign, both bishops and barons coined money for themselves. Hoveden, p. 490.

† The antiquity of compositions for murder is illustrated by Iliad  $\Sigma$ . 497. where, in the description of the shield of Achilles, two disputants are represented wrangling before the judge, for the wergild, or price of blood. *αἰνὰ ποινὴς αἰδέος ἀπυφθίμην*.

a practice was at an end ; and every man who owned a castle to shelter him in case of defeat, and a sufficient number of dependents to take the field, was at liberty to retaliate upon his neighbours whenever he thought himself injured. It must be kept in mind, that there was, frequently, either no jurisdiction to which he could appeal, or no power to enforce its awards ; so that we may consider the higher nobility of France as in a state of nature with respect to each other, and entitled to avail themselves of all legitimate grounds of hostility. The right of waging private war was moderated by Louis IX., checked by Philip IV., suppressed by Charles VI., but a few vestiges of its practice may be found still later.\*

III. In the modern condition of governments, taxation is a chief engine of the well-compacted machinery which regulates the system. The payments, the prohibitions, the licences, the watchfulness of col-

\* The subject of private warfare is treated so exactly and perspicuously by Robertson, that I should only waste the reader's time by dwelling so long upon it, as its extent and importance would otherwise demand. See *Hist. of Charles V.* vol. i. note 21. Few leading passages in the monuments of the middle ages, relative to this subject, have escaped the penetrating eye of that historian ; and they are arranged so well as to form a comprehensive treatise in small compass. I know not that I could add any much worthy of notice, unless it be the following. In the treaty between Philip Augustus and Richard Cœur de Lion, (1194) the latter refused to admit the insertion of an article, that none of the barons of either party should molest the other; lest he should infringe the customs of Poitou and his other dominions, in quibus consuetum erat ab antiquo, ut magnates causas proprias invicem gladiis allegarent. Hoveden, p. 741. (in Saville, *Script. Anglic.*)

lection, the evasions of fraud, the penalties and forfeitures, that attend a fiscal code of laws, present continually to the mind of the most remote and humble individual, the notion of a supreme, vigilant, and coercive authority. But the early European kingdoms knew neither the necessities nor the ingenuity of modern finance. From their demesne lands, the kings of France and Lombardy supplied the common expenses of a barbarous court. Even Charlemagne regulated the œconomy of his farms with the minuteness of a steward, and a large proportion of his capitularies are directed to this object. Their actual revenue was chiefly derived from free gifts made, according to an ancient German custom, at the annual assemblies\* of the nation, from amercements paid by alodial proprietors for default of military service, and from the *freda*, or fines accruing to the judge out of compositions for murder.† These amounted to one third of the whole *weregild*; and of this, again, one third was paid over by the count to the royal exchequer. After the feudal government prevailed in France, and neither the *heribannum* nor the *weregild* continued in use, there seems to have been hardly any source of regular revenue besides the domanial estates of the crown: unless we may reckon as such, that during a journey, the king had a prescriptive right to be supplied with necessaries by the towns and abbies through which he passed; commuted

\* Du Cange, *Dissertation quatrième sur Joinville*.

† Mably, l. i. c. 2. note 3. Du Cange, *voc. Heribannum, Fredum*.

sometimes into petty regular payments, called *droits de giste et de chevauchée*.\* Hugh Capet was nearly indigent as king of France; though, as count of Paris and Orleans, he might take the feudal aids and reliefs of his vassals. Several other small emoluments of himself and his successors, whatever they may since have been considered, were in that age rather seigniorial than royal. The rights of toll, of customs, alienage (*aubaine*), generally even the regale, or enjoyment of the temporalities of vacant episcopal sees and other ecclesiastical benefices,† were possessed within their own domains by the great feudatories of the crown. They, I apprehend, contributed nothing to their sovereign; not even those aids which the feudal customs enjoined.‡

The history of the royal revenue in France is, however, too important to be slightly passed over.

\* Velly, t. ii. p. 329. Villaret, t. xiv. p. 174—195. *Recueil des Historiens*, t. xiv. préface, p. 37. The last is a perspicuous account of the royal revenue in the twelfth century. But far the most luminous view of that subject, for the three next ages, is displayed by the comte de Pastoret, in his prefaces to the fifteenth and sixteenth volumes of the *Ordonnances des Rois*.

† The duke of Burgundy and count of Champagne did not possess the regale. But it was enjoyed by all the other peers; by the dukes of Normandy, Guienne, and Britany, the counts of Toulouse, Loitou, and Flanders. Mably, l. iii. c. 4. *Recueil des Historiens*, t. ii. p. 229. and t. xiv. p. 53. *Ordonnances des Rois*, t. i. p. 621.

‡ I have never met with any instance of a relief, aid, or other feudal contribution paid by the vassals of the French crown; but in this negative proposition it is possible that I may be deceived.

As the necessities of government increased, partly through the love of magnificence and pageantry, introduced by the crusades and the temper of chivalry, partly in consequence of employing hired troops instead of the feudal militia, it became impossible to defray its expenses by the ordinary means. Several devices, therefore, were tried, in order to replenish the exchequer. One of these was by extorting money from the Jews. It is almost incredible to what a length this was carried. Usury, forbidden by law and superstition to Christians, was confined to this industrious and covetous people.\* It is now no secret, that all regulations interfering with the interest of money render its terms more rigorous and burthensome. The children of Israel grew rich in despite of insult and oppression, and retaliated upon their Christian debtors. If an historian of Philip Augustus may be believed, they possessed almost one half of Paris. Unquestionably they must have had support both at the court and in the halls of justice. The policy of the kings of France was to employ them as a sponge to suck their subject's money, which they might afterwards express with less odium than direct taxation would incur. Philip Augustus released all Christians in his dominions from their debts to the Jews, reserving a fifth part to himself.† He afterwards expelled the whole nation from France. But they appear to have returned again;

\* The Jews were celebrated for usury as early as the sixth century. Greg. Turon. l. iv. c. 12. and l. vii. c. 23.

† Rigord, in Du Chesne, Hist. Franc. Script. t. iii. p. 8.



whether by stealth, or, as is more probable, by purchasing permission. St. Louis twice banished, and twice recalled the Jews. A series of alternate persecution and tolerance was borne by this extraordinary people with an invincible perseverance, and a talent of accumulating riches which kept pace with their plunderers; till new schemes of finance supplying the turn, they were finally expelled under Charles VI. and never afterwards obtained any legal establishment in France.\*

A much more extensive plan of rapine was carried on by lowering the standard. Originally the pound, a money of account, was equivalent to twelve ounces of silver; and divided into twenty pieces of coin, (sous) each equal consequently to nearly three shillings and four pence of our new English money.† At the revolution, the money of France had been depreciated in the proportion of seventy-three to one, and the sol was about equal to an English half-penny. This was the effect of a long continuance of fraudulent and arbitrary government. The abuse began under Philip I. in 1103, who alloyed his silver coin with a third of copper. So good an example was not lost upon subsequent princes; till under

\* Villaret, t. ix p. 433. Metz contained, and I suppose still contains, a great many Jews; but Metz was not part of the ancient kingdom.

† Besides this silver coin, there was a golden sol, worth forty pence. Le Blanc thinks the solidi of the Salic law and Capitularies mean the latter piece of money. The denarius, or penny, was worth two sous six deniers of modern French coin.

St. Louis, the mark-weight of silver, or eight ounces, was equivalent to fifty sous of the debased coin. Nevertheless these changes seem hitherto to have produced no discontent; whether it were that a people, neither commercial nor enlightened, did not readily perceive their tendency; or, as has been ingeniously conjectured, that these successive diminutions of the standard were nearly counterbalanced by an augmentation in the value of silver, occasioned by the drain of money during the crusades, with which they were about contemporaneous.\* But the rapacity of Philip the Fair kept no measures with the public; and the mark in his reign had become equal to eight livres or a hundred and sixty sous of money. Dissatisfaction and even tumults arose in consequence, and he was compelled to restore the coin to its standard under St. Louis.† His successors prac-

\* Villaret, t. xiv. p. 198. The price of commodities, he asserts, did not rise till the time of St. Louis. If this be said on good authority, it is a remarkable fact; but in England we know very little of prices before that period, and I doubt if their history has been better traced in France.

† It is curious, and not perhaps unimportant, to learn the course pursued in adjusting payments upon the restoration of good coin, which happened pretty frequently in the fourteenth century, when the States-General, or popular clamour, forced the court to retract its fraudulent policy. Le Blanc has published several ordinances nearly to the same effect. One of Charles VI. explains the method adopted rather more fully than the rest. All debts incurred since the depreciated coin began to circulate were to be paid in that coin, or according to its value. Those incurred previously to its commencement were to be paid according to the value of the money circulating at the time of the contract. Item, que tous les vrais emprunts

tised the same arts of enriching their treasury ; under Philip of Valois, the mark was again worth eight livres. But the film had now dropt from the eyes of the people ; and these adulterations of money, rendered more vexatious by continued re-coinages of the current pieces, upon which a fee was extorted by the moneyers, shewed in their true light as mingled with fraud and robbery.\*

These resources of government, however, by no means superseded the necessity of more direct taxation. The kings of France exacted money from the roturiers, and particularly the inhabitants of towns, within their domains. In this they only acted as proprietors, or suzerains ; and the barons took the same course in their own lands. Philip Augustus first ventured upon a stretch of prerogative, which, in the words of his biographer, disturbed all France. He deprived by force, says Rigord, both his own vassals, who had been accustomed to boast of their immunities, and their feudal tenants, of a third part of their goods.† Such arbitrary taxation of the no-

faits en deniers sans fraude, se payeront en telle monnoye comme l'on aura emprunté, si elle a plein cours au temps du payement, et sinon, ils payeront en monneye coursable lors selon lu valeur et le prix du marc d'or ou d'argent. p. 32.

\* Continuator Gul. de Nangis in *Spicilegio*, t. iii. For the successive changes in the value of French coins, the reader may consult Le Blanc's treatise, or the *Ordonnances des Rois*; or he may find a summary view of them in Du Cange, v. *Moneta*. The bad consequences of these innovations are well treated by M. de Pastoret, in his elaborate preface to the sixteenth volume of the *Ordonnances des Rois*, p. 40.

† Du Chesne, t. v. p. 43.

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bility, who deemed that their military service discharged them from all pecuniary burthens, France was far too aristocratical a country to bear. It seems not to have been repeated; and his successors generally pursued more legitimate courses. Upon obtaining any contribution, it was usual to grant letters patent, declaring that it had been freely given, and should not be turned into precedent in time to come. Several of these letters patent of Philip the Fair are extant, and published in the general collection of ordinances.\* But in the reign of this monarch, a great innovation took place in the French constitution, which, though it principally affected the method of levying money, may seem to fall more naturally under the next head of consideration.

IV. There is no part of the French feudal policy so remarkable as the entire absence of all supreme legislation. We find it difficult to conceive the existence of a political society, nominally one kingdom, and under one head, in which, for more than three hundred years, there was wanting the most essential attribute of government. It will be requisite, however, to take this up a little higher, and inquire, what was the original legislature of the French monarchy.

\* *Faisons scavoir et recognoissons que la derniere subvention que ils nous ont faite (les barons, vassaux et nobles d'Auvergne) de pure grace sans ce que ils y fussent tenus que de grace; et voulons et leur octroyons que les autres subventions que ils nous ont faites ne leur facent nul prejudice, es choses esquelles ils n'étoient tenus, ne par ce nul nouveau droit ne nous soit acquis ne amenuisié.* Ordonnance de 130. apud Mably, l. iv. c. 3. note 5. See other authorities in the same place.

Arbitrary rule, at least in theory, was uncongenial to the character of the northern nations. Neither the power of making laws, nor that of applying them to the circumstances of particular cases, were left at the discretion of the sovereign. The Lombard kings held assemblies every year at Pavia, where the chief officers of the crown and proprietors of lands deliberated upon all legislative measures, in the presence and, nominally at least, with the consent of the multitude.\* Frequent mention is made of similar public meetings in France by the historians of the Merovingian kings, and, still more unequivocally, by their statutes.† These assemblies have been called parliaments of the Champ de Mars, having originally been held in the month of March. We know very little of their constituent members; but it is probable, that every allodial proprietor had a legal right to assist in their deliberations; and at least equally so, that the efficient power was nearly

\* Luitprand, king of the Lombards, says that his laws *sibi placuisse unà cum omnibus judicibus de Austriæ et Neustriæ partibus, et de Tusciæ finibus, cum reliquis fidelibus meis Langobardis, et omni populo assistente.* Muratori, Dissert. 22.

† Mably, l. i. c. 1. note 1. Lindebrog, *Codex Legum Antiquarum*, p. 363. 369. The following passage, quoted by Mably, (c. ii. n. 6.) from the preamble of the revised Salic law under Clotaire II. is explicit. *Temporibus Clotairii regis unà cum principibus suis, id est, 33 episcopis et 34 ducibus et 79 comitibus, vel cætero populo constituta est.* A remarkable instance of the use of *vel* instead of *et*, which was not uncommon, and is noticed by Du Cange, under the word *Vel*. Another proof of it occurs in the very next quotation of Mably from the edict of 615, *cum pontificibus, vel cum magnis viris optimatibus.*

confined to the leading aristocracy. Such indeed is the impression conveyed by a remarkable passage of Hincmar, archbishop of Rheims, during the time of Charles the Bald, who has preserved, on the authority of a writer contemporary with Charlemagne, a sketch of the Frankish government under that great prince. Two assemblies (*placita*) were annually held. In the first, all regulations of importance to the public weal for the ensuing year were enacted : and to this, he says, the whole body of clergy and laity repaired ; the greater, to deliberate upon what was fitting to be done ; and the less, to confirm by their voluntary assent, not through deference to power, or sometimes even to discuss, the resolutions of their superiors.\* In the second annual assembly, the chief men and officers of state were alone admitted, to consult upon the most urgent affairs of government. They debated, in each of these, upon certain capitularies, or short proposals, laid before them by the king. The clergy and nobles met in separate chambers, though sometimes uniting for the

\* *Consuetudo tunc temporis talis erat, ut non sæpius, sed bis in anno placita duo tenerentur. Unum, quando ordinabatur status totius regni ad anni vertentis spatium; quod ordinatum nullus eventus rerum, nisi summa necessitas, quæ similiter toti regno incumberebat, mutabat. In quo placito generalitas universorum majorum, tam clericorum quam laicorum, conveniebat; seniores, propter consilium ordinandum; minores, propter idem consilium suscipiendum, et interdum pariter tractandum, et non ex potestate, sed ex proprio mentis intellectu vel sententiâ confirmandum. Hincmar, Epist. 5. de ordine palatii. I have not translated the word majorum in the above quotation, not apprehending its sense.*

purposes of deliberation. In these assemblies, and principally, I presume, in the more numerous of the two annually summoned, that extensive body of laws, the capitularies of Charlemagne, were enacted. And though it would contradict the testimony just adduced from Hincmar, to suppose, that the lesser freeholders took a very effective share in public counsels, yet their presence, and the usage of requiring their assent, indicate the liberal principles upon which the system of Charlemagne was founded. It is continually expressed in his capitularies, and those of his family, that they were enacted by general consent.\* In one of Louis the Debonair, we even trace the first germ of representative legislation. Every count is directed to bring with him to the general assembly, twelve Scabini, if there should be so many in his county; or, if not, should fill up the number out of the most respectable persons resident. These Scabini were judicial assessors of the count, chosen by the alodial proprietors.†

\* Capitula quæ præterito anno legi Salicæ cum omnium consensu addenda esse censuimus (A. D. 801.) Ut populus interrogetur de capitulis quæ in lege noviter addita sunt, et postquam omnes consenserint, subscriptiones et manufirmationes suas in ipsis capitulis faciant. (A. D. 813.) Capitularia patris nostri quæ Franci pro lege tenenda judicaverunt. (A. D. 837.) I have borrowed these quotations from Mably, who remarks that the word *populus* is never used in the earlier laws. See too Du Cange, vv. Lex, Mallum, Pactum.

† Vult dominus Imperator ut in tale placitum quale ille nunc jusserit, veniat unusquisque comes, et adducat secum duodecim scabinos, si tanti fuerint; sin autem, de melioribus hominibus illius comitatus suppleat numerum duodenarium. Mably, l. ii. c. 2.

The circumstances, however, of the French empire for several subsequent ages, were exceedingly adverse to such enlarged schemes of polity. The nobles contemned the imbecile descendants of Charlemagne; and the people, or lesser freeholders, if they escaped absolute villenage, lost their immediate relation to the supreme government in the subordination to their lord established by the feudal law. Yet we may trace the shadow of ancient popular rights in one constitutional function of high importance, the choice of a sovereign. Historians who relate the election of an emperor or king of France seldom omit to specify the consent of the multitude, as well as of the temporal and spiritual aristocracy; and even in solemn instruments that record such transactions, we find a sort of importance attached to the popular suffrage.\* It is surely less probable that a recognition

\* It has been intimated in another place, that the French monarchy seems not to have been strictly hereditary under the later kings of the Merovingian race; at least expressions indicating a formal election are frequently employed by historians. Pepin of course came in by the choice of the nation. At his death he requested the consent of the counts and prelates to the succession of his sons; (Baluzii Capitularia, p. 187) though they had bound themselves by oath at his consecration, never to elect a king out of another family. *Ut nunquam de alterius lumbis regem eligere præsumant.* (Formula Consecrationis Pippini in Recueil des Historiens, t. v.) In the instrument of partition by Charlemagne among his descendants, he provides for their immediate succession in absolute terms, without any mention of consent. But in the event of the decease of one of his sons leaving a child, *whom the people shall chuse*, the other princes were to permit him to reign. Baluze, p. 440. This is repeated more perspicuously in the partition made by Louis I. in 817. *Si quis eorum de-*



of this elective right should have been introduced as a mere ceremony, than that the form should have survived after length of time and revolutions of government had almost obliterated the recollection of its meaning.

*cedens legitimos filios reliquerit, non inter eos potestas ipsa dividatur, sed potius populus pariter conveniens, unum ex iis, quem dominus voluerit, eligat, et hunc senior frater in loco fratris et filii recipiat.* Baluze, p. 577. Proofs of popular consent being given to the succession of kings during the two next centuries are frequent, but of less importance on account of the irregular condition of government. Even after Hugh Capet's accession, hereditary right was far from being established. The first six kings of this dynasty procured the *co-optation* of their sons, by having them crowned during their own lives. And this was not done without the consent of the chief vassals. (*Recueil des Hist. t. xi. p. 133.*) In the reign of Robert, it was a great question, whether the elder son should be thus designated as heir in preference to his younger brother, whom the queen, Constance, was anxious to place upon the throne. Odolric, bishop of Orleans, writes to Fulbert, bishop of Chartres, in terms which lead one to think, that neither hereditary succession, nor primogeniture, was settled on any fixed principle. (*Id. t. x. p. 504.*) And a writer in the same collection, about the year 1000, expresses himself in the following manner: *Melius est electioni principis non subscribere, quàm post subscriptionem electum contemnere; in altero enim libertatis amor laudatur, in altero servilis contumacia probro datur. Tres namque generales electiones novimus; quarum una est regis vel imperatoris, altera pontificis, altera abbatis. Et primam quidem facit concordia totius regni; secundam vero unanimitas civium et cleri; tertiam sanius consilium cœnobiticæ congregationis.* (*Id. p. 626.*) At the coronation of Philip I. in 1059, the nobility and people (*milites et populi tam majores quam minores*) testified their consent by crying, *Laudamus, volumus, fiat.* t. xi. p. 33. I suppose, if search were made, that similar testimonies might be found still later; and perhaps hereditary succession cannot be considered as a fundamental law till the reign of Philip Augustus, the æra of many changes in the French constitution.

It must however be impossible to ascertain even the theoretical privileges of the subjects of Charlemagne, much more to decide how far they were substantial or illusory. We can only assert in general, that there continued to be some mixture of democracy in the French constitution during the reigns of Charlemagne and his first successors. The primæval German institutions were not eradicated. In the Capitularies, the consent of the people is frequently expressed. Fifty years after Charlemagne, his grandson Charles the Bald, succinctly expresses the theory of legislative power. A law, he says is made by the people's consent and the king's enactment.\* It would hardly be warranted by analogy or precedent, to interpret the word people so very narrowly as to exclude any alodial proprietors, among whom, however unequal in opulence, no legal inequality of rank is supposed to have yet arisen.

But by whatever authority laws were enacted, whoever were the constituent members of national assemblies, they ceased to be held in about seventy years from the death of Charlemagne. The latest capitularies are of Carloman in 882.† From this time there ensues a long blank in the history of

\* *Lex consensu populi fit, constitutione regis.* *Recueil des Hist. t. vii. p. 656.*

† It is generally said, that the capitularies cease with Charles the Simple, who died in 921. But Baluze has published only two under the name of that prince; the first, a declaration of his queen's jointure; the second, an arbitration of disputes in the church of Tongres; neither surely deserving the appellation of a law.

French legislation. The kingdom was as a great fief, or rather as a bundle of fiefs, and the king little more than one of a number of feudal nobles, differing rather in dignity than in power from some of the rest. The royal council was composed only of barons, or tenants in chief, prelates, and household officers. These now probably deliberated in private, as we hear no more of the consenting multitude. Political functions were not in that age, so clearly separated, as we are taught to fancy they should be; this counsel advised the king in matters of government, confirmed and consented to his grants, and judged in all civil and criminal cases, where any peers of their court were concerned.\* The great vassals of the crown acted for themselves in their own territories, with the assistance of counsels similar to that of the king. Such indeed was the symmetry of feudal customs, that the manerial court of every vavassor represented in miniature that of his sovereign.†

\* *Regali potentia in nullo abuti volentes*, says Hugh Capet, *omnia negotia reipublicæ in consultatione et sententiâ fidelium nostrorum disponimus*. *Recueil des Hist.* t. x. p. 392. The subscriptions of these royal counsellors were necessary for the confirmation, or, at least, the authentication of charters, as was also the case in England, Spain and Italy. This practice continued in England till the reign of John.

The *Curia regis* seems to have differed only in name from the *Concilium regium*. It is also called *Curia parium*, from the equality of the barons who composed it, standing in the same feudal degree of relation to the sovereign. But we are not yet arrived at the subject of jurisdiction, which it is very difficult to keep distinct from what is immediately before us.

† *Recueil des Hist.* t. xi. p. 300. and préface, p. 179. *Vaissette*, *Hist. de Languedoc*, t. ii. p. 508.

But, notwithstanding the want of any permanent legislation during so long a period, instances occur, in which the kings of France appear to have acted with the concurrence of an assembly, more numerous and more particularly summoned than the royal council. At such a congress held in 1146, the crusade of Louis VII. was undertaken.\* We find also an ordinance of the same prince in some collections, reciting that he had convoked a general assembly at Soissons, where many prelates and barons then present had consented and requested, that private wars might cease for the term of ten years.† The famous Saladine tithe was imposed upon lay as well as ecclesiastical revenues by a similar convention in 1188.‡ And when Innocent IV., during his contest with the emperor Frederic, requested an asylum in France,

\* Velly, t. iii. p. 119. This, he observes, is the first instance in which the word parliament is used for a deliberative assembly.

† Ego Ludovicus Dei gratiâ Francorum rex ad reprimendum fervorem malignantium, et compescendum violentas prædorum manus, postulationibus cleri et assensu baroniæ, toti regno pacem constituimus. Eâ causâ, anno Incarnati Verbi 1155, iv idus Jun. Suëssionense concilium celebre adunavimus, et affuerunt archiepiscopi Remensis, Senonensis et eorum suffraganei; item barones, comes Flandrensis, Trecensis, et Nivernensis et quamplures alii, et dux Burgundiæ. Ex quorum beneplacito ordinavimus a veniente Paschâ ad decem annos, ut omnes ecclesiæ regni et omnes agricolæ etc. pacem habeant et securitatem ——— In pacem istam juraverunt Dux Burgundiæ, Comes Flandriæ, ——— et reliqui barones qui aderant.

This ordinance is published in Du Chesne, Script. Rerum Gallicarum, t. iv. and in Recueil des Histor. t. xiv. p. 387; but not in the general collection of Ordonuances.

‡ Velly, t. iii. p. 315.

St. Louis, though much inclined to favour him, ventured only to give a conditional permission provided it were agreeable to his barons, whom, he said, a king of France was bound to consult in such circumstances. Accordingly he assembled the French barons, who unanimously refused their consent.\*

It was the ancient custom of the kings of France, as well as of England, and indeed of all those vassals who affected a kind of sovereignty, to hold general meetings of their barons, called *Cours Plénières* or *Parliaments*, at the great festivals of the year. These assemblies were principally intended to make a display of magnificence, and to keep the feudal tenants in good humour; nor is it easy to discover that they passed in any thing but pageantry.† Some respectable antiquaries have however been of opinion, that affairs of state were occasionally discussed in them; and this is certainly by no means inconsistent with probability, though not sufficiently established by evidence.‡

Excepting a few instances, most of which have been mentioned, it does not appear, that the kings of the house of Capet acted according to the advice and deliberation of any national assembly, such as assisted the Norman sovereigns of England; nor was any consent required for the validity of their edicts, except that of their ordinary council, chiefly

\* *Idem*, t. iv. p. 306.

† Du Cange, *Dissert.* 5. sur Joinville.

‡ *Mém. de l'Acad. des Inscript.* t. xli. *Recueil des Hist.* t. xi. préface, p. 155.

formed of their household officers and less powerful vassals. This is at first sight very remarkable. For there can be no doubt that the government of Henry I. or Henry II. was incomparably stronger than that of Louis VI. or Louis VII. But this apparent absoluteness of the latter was the result of their real weakness and the disorganization of the monarchy. The peers of France were infrequent in their attendance upon the king's council, because they denied its coercive authority. It was a fundamental principle, that every feudal tenant was so far sovereign within the limits of his fief, that he could not be bound by any law without his consent. The king, says St. Louis in his *Establishments*, cannot make proclamation, that is, declare any new law, in the territory of a baron without his consent, nor can the baron do so in that of a vavassor.\* Thus, if legislative power be essential to sovereignty, we cannot in strictness assert the king of France to have been sovereign beyond the extent of his domanial territory. Nothing can more strikingly illustrate the dissimilitude of the French and English constitutions of government, than the sentence above cited from the code of St. Louis.

Upon occasions, when the necessity of common deliberation, or of giving to new provisions more extensive scope than the limits of a single fief, was too glaring to be overlooked, congresses of neighbouring

\* Ne li Rois ne puet mettre ban en la terre au baron sans son assentement, ne li Bers [Baron] ne puet mettre ban en la terre au vavassor. *Ordonnances des Rois*, t. i. p. 126.

lords met in order to agree upon resolutions, which each of them undertook to execute within his own domains. The king was sometimes a contracting party, but without any coercive authority over the rest. Thus we have what is called an ordinance, but, in reality, an agreement, between the king (Philip Augustus) the countess of Troyes or Champagne, and the lord of Dampierre, relating to the Jews in their domaine; which agreement or ordinance, it is said, should endure “until ourselves, and the countess of Troyes, and Guy de Dampierre, who make this contract, shall dissolve it with the consent of such of our barons as we shall summon for that purpose.”\*

Ecclesiastical councils were another substitute for a regular legislature; and this defect in the political constitution rendered their encroachments less obnoxious, and almost unavoidable. That of Troyes, in 878, composed perhaps in part of laymen, imposed a fine upon the invaders of church property.† And the council of Toulouse, in 1229, prohibited the erection of the new fortresses, or the entering into any leagues, except against the enemies of religion; and ordained that judges should administer justice

\* Quousque nos, et comitissa Trecensis, et Guido de Domnâ petrâ, qui hoc facimus, per nos, et illos de baronibus nostris, quos ad hoc vocare volumus, illud difficiamus. *Ordonnances des Rois*, t. i. p. 39. This ordinance bears no date, but it was probably between 1218 and 1223, the year of Philip's death.

† Vaisette, *Hist. de Languedoc*, t. ii. p. 6.

gratuitously, and publish the decrees of the council four times in the year.\*

The first unequivocal attempt, for it was nothing more, at general legislation, was under Louis VIII. in 1223. in an ordinance, which, like several of that age, relates to the condition and usurious dealings of the Jews. It is declared in the preamble to have been enacted, *per assensum archiepiscoporum, episcoporum, comitum, baronum, et militum regni Franciæ, qui Judæos habent, et qui Judæos non habent.* This recital is probably untrue, and intended to cloak the bold innovation contained in the last clause of the following provision: *Sciendum, quod nos et barones nostri statuimus et ordinavimus de statu Judæorum quod nullus nostrum alterius Judæos recipere potest vel retinere; et hoc intelligendum est tam de his qui stabilimentum juraverint, quam de illis qui non juraverint.*† This was renewed with some alteration in 1230, *de communi consilio baronum nostrorum.*‡

But whatever obedience the vassals of the crown might pay to this ordinance, their original exemption from legislative controul remained, as we have seen, unimpaired at the date of the establishments of St. Louis, about 1269; and their ill-judged confidence in this feudal privilege still led them to absent themselves from the royal council. It seems impossible to doubt, that the barons of France might have as-

\* Velly, t. iv. p. 132.

† Ordonnances des Rois, t. i. p. 47.

‡ Id. p. 53.



sented the same right, which those of England had obtained; that of being duly summoned by special writ, and thus have rendered their consent necessary to every measure of legislation. But the fortunes of France were different. The establishments of St. Louis are declared to be made "*par grand conseil de sages hommes et de bons clers,*" but no mention is made of any consent given by the barons; nor does it often, if ever, occur in subsequent ordinances of the French kings.

The nobility did not long continue safe in their immunity from the king's legislative power. In the ensuing reign of Philip the Bold, Beaumanoir lays it down, though in very moderate and doubtful terms, that "when the king makes any ordinance specially for his own domains, the barons do not cease to act in their territories according to the ancient usage; but, when the ordinance is general, it ought to run through the whole kingdom, and we ought to believe that it is made with good advice, and for the common benefit."\* In another place he says with more positiveness, that "the king is sovereign above all, and has of right the general custody of the realm, for which cause he may make what ordinances he pleases for the common good, and what he ordains ought to be observed; nor is there any one so great but may be drawn into the king's court for default of right or for false judgement, or in matters that affect the sovereign."† These latter words give us a clue to the

\* *Coûtes de Beauvoisis*, c. 46.

† C. 34.

solution of the problem, by what means an absolute monarchy was established in France. For though the barons would have been little influenced by the authority of a lawyer like Beaumanoir, they were much less able to resist the coercive logic of a judicial tribunal. It was in vain for them to deny the obligation of royal ordinances within their own domains, when they were compelled to acknowledge the jurisdiction of the parliament of Paris, which took a very different view of their privileges. This progress of the royal jurisdiction will fall under the next topic of inquiry, and is only now hinted at, as the probable means of confirming the absolute legislative power of the French crown.

The ultimate source however of this increased authority will be found in the commanding attitude assumed by the kings of France from the reign of Philip Augustus, and particularly in the annexation of the two great fiefs of Normandy and Toulouse. Though the chatelains and vavassors who had depended upon those fiefs before their re-union were, agreeably to the text of St. Louis's ordinance, fully sovereign, in respect of legislation, within their territories, yet they were little competent, and perhaps little disposed, to offer any opposition to the royal edicts; and the same relative superiority of force, which had given the first kings of the house of Capet a tolerably effective controul over the vassals dependent on Paris and Orleans, while they hardly pretended to any over Normandy and Toulouse, was now extended to the greater part of the kingdom.

St. Louis, in his scrupulous moderation, forbore to avail himself of all the advantages presented by the circumstances of his reign; and his establishments bear testimony to a state of political society, which, even at the moment of their promulgation, was passing away. The next thirty years after his death, with no marked crisis, and with little disturbance, silently demolished the feudal system, such as had been established in France during the dark confusion of the tenth century, Philip the Fair, by help of his lawyers and his financiers, found himself, at the beginning of the fourteenth century, the real master of his subjects.

There was however one essential privilege which he could not hope to overturn by force, the immunity from taxation enjoyed by his barons. This, it will be remembered, embraced the whole extent of their fiefs, and their tenantry of every description: the king having no more right to impose a tallage upon the demesne towns of his vassals, than upon themselves. Thus his resources, in point of taxation, were limited to his own domains; including certainly, under Philip the Fair, many of the noblest cities in France, but by no means sufficient to meet his increasing necessities. We have seen already the expedients employed by this rapacious monarch; a shameless depreciation of the coin, and, what was much more justifiable, the levying taxes within the territories of his vassals by their consent. Of these measures, the first was odious, the second slow and imperfect. Confiding in his sovereign authority,

though recently, yet almost completely established, and little apprehensive of the feudal principles, already grown obsolete and discountenanced, he was bold enough to make an extraordinary innovation in the French constitution. This was the convocation of the States General, a representative body, composed of the three orders of the nation.\* They were

\* It is almost unanimously agreed among French writers, that Philip the Fair first introduced a representation of the towns into his national assembly of States General. Nevertheless, the Chronicles of St. Denis, and other historians of rather a late date, assert that the deputies of towns were present at a parliament held in 1241, to advise the king what should be done in consequence of the count of Angouleme's refusal of homage. Boulainvilliers, *Hist. de l'Ancien Gouvernement de France*, t. ii. p. 20 Villaret, t. ix. p. 125. The latter pretends even that they may be traced a century further back: on voit déjà les gens de bonnes villes assister aux états de 1145. Ibid. But he quotes no authority for this; and his vague language does not justify us in supposing, that any representation of the three estates, properly so understood, did, or indeed could, take place in 1145, while the power of the aristocracy was unbroken, and very few towns had been incorporated. If it be true that the deputies of some royal towns were summoned to the parliament of 1241, the conclusion must not be inferred, that they possessed any consenting voice, nor perhaps that they formed, strictly speaking, an integrant portion of the assembly. There is reason to believe, that deputies from the royal burghs of Scotland occasionally appeared at the bar of parliament, long before they had any deliberative voice. Pinkerton's *Hist. of Scotland*, vol. i. p. 371.

An ordinance of St. Louis, quoted in a very respectable book, Vaissette's *History of Languedoc*, t. iii. p. 480, but not published in the *Recueil des Ordonnances*, not only shews the existence, in one instance, of a *provincial* legislative assembly, but is the earliest proof perhaps of the tiers état appearing as a constituent part of it. This relates to the seneschaussée, or county, of Beaucaire in Languedoc, and bears date in 1254. It

first convened in 1302, in order to give more weight to the king's cause, in his great quarrel with Boniface VIII ; but their earliest grant of a subsidy is in 1314. Thus the nobility surrendered to the crown

provides, that if the seneschal shall think fit to prohibit the export of merchandize, he shall summon some of the prelates, barons, knights, and inhabitants of the chief towns, by whose advice he shall issue such prohibition, and not recall it, when made, without like advice. But though it is interesting to see the progressive importance of the citizens of towns, yet this temporary and insulated ordinance is not of itself sufficient to establish a constitutional right. Neither do we find therein any evidence of representation; it rather appears that the persons assisting in this assembly were *notables*, selected by the seneschal.

I am not aware of any instance of regular provincial states being summoned with such full powers, although it was very common in the fourteenth century to ask their consent to grants of money, when the court was unwilling to convoke the States General. But there is a passage in a book of considerable credit, the *Grand Customary*, or *Somme Rurale* of Bouteiller, which seems to render general the particular case of the seneschaussée of Beaucaire. Bouteiller wrote about the end of the fourteenth century. The great courts summoned from time to time by the baillis and seneschals were called *assisses*. Their usual function was to administer justice, especially by way of appeal, and perhaps to redress abuses of inferior officers. But he seems to give them a more extended authority. *En assise*, he says, *appellés les sages et seigneurs du pais, peuvent estre mises sus nouvelles constitutions, et ordonnances sur le pais et destruites autre que seront grevables, et en autre temps non, et doivent estre publiées, afin que nul ne les pueust ignorer, et lors ne les peut ne doit jamais nul redarguer.*—*Mém. de l'Acad. des Inscriptions*, t. xxx. p. 606.

The *taille* was assessed by respectable persons chosen by the advice of the parish priests and others, which gave the people a sort of share in the *repartition*, to use a French term, of public burthens; a matter of no small importance, where a tax is levied on visible property. *Ordonnances des Rois*, p. 291.

their last privilege of territorial independence; and having first submitted to its appellent jurisdiction over their tribunals, next to its legislative supremacy, now suffered their own dependants to become, as it were, immediate, and a Third Estate to rise up almost co-ordinate with themselves, endowed with new franchises, and bearing a new relation to the monarchy.

It is impossible not to perceive the motives of Philip in embodying the deputies of towns, as a separate estate in the national representation. He might, no question, have convoked a parliament of his barons, and obtained a pecuniary contribution which they would have levied upon their burgesses and other tenants. But besides the ulterior policy of diminishing the controul of the barons over their dependants, he had good reason to expect more liberal aid from the immediate representatives of the people, than through the concession of a dissatisfied aristocracy. He must be blind indeed, says Pasquier, who does not see that the roturier was expressly summoned to this assembly, contrary to the ancient institutions of France, for no other reason, than that, inasmuch as the burthen was intended to fall principally upon him, he might engage himself so far by promise, that he could not afterwards murmur or become refractory.\* Nor would I deny the influence

Beaumanoir, p. 269. This however continued, I believe, to be the practice in later times; I know it is so in the present system of France; and is perfectly distinguishable from a popular consent to taxation.

\* *Recherches de la France*, l. ii. c. 7.

of more generous principles ; the example of neighbouring countries, the respect due to the progressive civilization and opulence of the towns, and the application of that ancient maxim of the northern monarchies, that whoever was elevated to the perfect dignity of a freeman, acquired a claim to participate in the imposition of public tributes.

It is very difficult to ascertain the constitutional rights of the States General, claimed or admitted, during forty years after their first convocation. If indeed we could implicitly confide in an historian of the sixteenth century, who asserts that Louis Hutin bound himself and his successors not to levy any tax without the consent of the three estates, the problem would find its solution.\* This ample charter does not appear in the French archives ; and though by no means to be rejected on that account, when we consider the strong motive for its destruction, cannot fairly be adduced as an authentic fact. Nor can we altogether infer, perhaps, from the collection of ordinances, that the crown had ever intentionally divested itself of the right to impose tallages on its domanial tenants. All others, however, were certainly exempted from that prerogative ; and there seems to have been a general sentiment, that no tax whatever could be levied without free consent of the estates.†

\* Boulainvillers (*Hist. de l'Anc. Gouvernement*, t. ii. p. 128) refers for this to Nicolas Gilles, a chronicler of no great repute.

† Mably, *Observat. sur l'Hist. de France*, l. v. c. l. is positive against the right of Philip the Fair and his successors to

Louis Hutin in a charter granted to the nobles and burgesses of Picardy, promises to abolish the unjust taxes (*maliotes*) imposed by his father;\* and in another instrument, called the charter of Normandy, declares that he renounces for himself and his successors all undue tallages and exactions, except in case of evident utility.† This exception is doubtless of perilous ambiguity; yet as the charter was literally wrested from the king by an insurrectionary league, it might be expected that the same spirit would rebel against his royal interpretation of state-necessity. His successor, Philip the Long, tried the experiment of *gabelle*, or excise upon salt. But it produced so much discontent that he was compelled to assemble the States General, and to publish an ordinance declaring that the impost was not designed to be perpetual, and that, if a sufficient supply for the existing war could be found elsewhere, it should instantly determine.‡ Whether this was done, I do not discover; nor do I conceive, that any of the sons of Philip the Fair, inheriting much of his rapacity and ambition, abstained from extorting money without consent. Philip of Valois renewed and augmented the duties on salt by his own prerogative, nor had the

impose taxes. Montlosier (*Monarchie Française*, t. i. p. 202.) is of the same opinion. In fact, there is reason to believe, that the kings in general did not claim that prerogative absolutely whatever pretexts they might set up for occasional stretches of power.

\* *Ordonnances des Rois*, t. i. p. 566.

† *Idem*, t. i. p. 589.

‡ *Ordonnances des Rois*, t. i. p. 679.



abuse of debasing the current coin been ever carried to such a height as during his reign, and the first years of his successor. These exactions, aggravated by the smart of a hostile invasion, produced a very remarkable concussion in the government of France.

I have been obliged to advert in another place to the memorable resistance made by the Estates General of 1355 and 1356 to the royal authority, on account of its inseparable connexion with the civil history of France.\* In the present chapter, the assumption of political influence by those assemblies deserves particular notice. Not that they ever pretended to restore the ancient constitution of the Northern nations still flourishing in Spain and England, the participation of legislative power with the crown. Five hundred years of anarchy and ignorance had swept away all remembrance of those general diets, in which the capitularies of the Carolingian dynasty had been established by common consent. Charlemagne himself was hardly known to the French of the fourteenth century, except as the hero of some silly romance or ballad. The States General remonstrated indeed against abuses, and especially the most flagrant of all, the adulteration of money; but the ordinance granting redress emanated altogether from the king, and without the least reference to their consent which sometimes appears to be studiously omitted.† But the privi-

\* Chap. i. p. 53.

† The proceedings of States-General held under Philip IV. and his sons have left no trace in the French statute-book.

lege upon which the States under John solely relied for securing the redress of grievances, was that of granting money, and of regulating its collection. The latter, indeed, though for convenience it may be devolved upon the executive government, appears to be incident to every assembly in which the right of taxation resides. That accordingly, which met in 1355, nominated a committee chosen out of the three orders, which was to sit after their separation, and which the king bound himself to consult, not only as to the internal arrangements of his administration, but upon every proposition of peace or armistice with England. Deputies were dispatched into each district, to superintend the collection, and receive the produce of the subsidy granted by the States.\* These assumptions of power would not long, we may be certain, have left

Two ordinances alone out of some hundred enacted by Philip of Valois appear to have been founded upon their suggestions.

It is absolutely certain, that the States-General of France had, at no period and in no instance, a co-ordinate legislative authority with the crown, or even a consenting voice. Mably, Eucelainvilliers, and Montlosier, are as decisive on this subject, as the most courtly writers of that country. It follows as a just consequence, that France never possessed a free constitution; nor had the monarchy any limitations in respect of enacting laws, save those which, until the reign of Philip the Fair, the feudal principles had imposed.

\* *Ordonnances des Rois*, t. iii. p. 21. and préface, p. 42. This préface by M. Sécouisse, the editor, gives a very clear view of the general and provincial assemblies held in the reign of John. Boulainvilliers, *Hist. de l'Ancien Gouvernement de France*, t. ii. or Villaret, t. ix. may be perused with advantage.

the sole authority of legislation in the king, and might perhaps be censured as usurpation, if the peculiar emergency in which France was then placed did not furnish their defence. But, if it be true that the kingdom was reduced to the utmost danger and exhaustion, as much by malversation of its government, as by the armies of Edward III., who shall deny to its representatives the rights of ultimate sovereignty, and of suspending at least the royal prerogatives, by the abuse of which they were falling into destruction? \* I confess that it is exceedingly difficult, or perhaps impracticable, with such information as we possess, to decide upon the motives and conduct of the States General, in their several meetings before and after the battle of Poitiers. Arbitrary power prevailed ; and its opponents became of course the theme of obloquy with modern historians. Froissart, however, does not seem to impute any fault to these famous assemblies of the States General ; and still less a more contemporary historian, the anonymous continuator of Nangis. Their notices, however, are very slight ; and our chief knowledge of the parliamentary history of France, if I may apply the expression, must be collected from the royal ordinances made upon these occasions, or from unpublished accounts of their transactions. Some of these, which are quoted by the later French historians, are of course inaccessible to a writer in this country.

\* The second continuator of Nangis in the *Spicililegium* dwells on the heavy taxes, diminution of money, and general oppressiveness of government in this age. t. iii. p. 108.

But a manuscript in the British Museum, containing the early proceedings of that assembly which met in October 1356, immediately after the battle of Poitiers, by no means leads to an unfavourable estimate of its intentions.\* The tone of their representations to the Duke of Normandy (Charles V., not then called Dauphin) is full of loyal respect; their complaints of bad administration, though strong and pointed, not outrageous; their offers of subsidy liberal. The necessity of restoring the coin is strongly represented, as the grand condition upon which they consent to tax the people, who had been long defrauded by the base money of Philip the Fair and his successors.†

\* Cotton MSS. Titus, t. xii. fol. 58—74. This manuscript is noticed, as an important document, in the preface to the third volume of *Ordonnances*, p. 48. by M. Sécousse, who had found it mentioned in the *Bibliothèque Historique* of Le Long, No. 11242. No French antiquary appears, at least before that time, to have seen it; but Boulainvilliers conjectured that it related to the assembly of States in February 1356, (1357) and M. Sécousse supposed it rather to be the original journal of the preceding meeting in October 1356, from which a copy, found among the manuscripts of Dupuy, and frequently referred to by Sécousse himself in his preface, had been taken. M. Sécousse was perfectly right in supposing the manuscript in question to relate to the proceedings of October, and not of February; but it is not an original instrument. It forms part of a small volume written on vellum and containing several other treatises. It seems, however, as far as I can judge, to be another copy of the account which Dupuy possessed, and which Sécousse so often quotes, under the name of *Procès-verbal*.

† Et estoit et est l'entente de ceulx qui a la ditte convocation estoient que quelconque ottroy ou ayde qu'ils feissent, ils eussent bonne monnoye et estable selon l'advis des trois estats —et que les chartres et lettres faites pour les reformatiōns du

But whatever opportunity might now be afforded for establishing a just and free constitution in France was entirely lost. Charles, inexperienced and surrounded by evil counsellors, thought the States General inclined to encroach upon his rights, of which, in the best part of his life, he was always abundantly careful. He dismissed therefore the assembly, and had recourse to the easy but ruinous expedient of debasing the coin. This led to seditions at Paris, by which his authority and even his life were endangered. In February 1357, three months after the last meeting had been dissolved, he was obliged to convoke the States again, and to enact an ordinance conformable to the petitions tendered by the former assembly.\* This contained many excellent provi-

royaume par le roy Philippe le bel, et toutes celles qui furent faites par le roy notre seigneur qui est a present fussent confirmées enterinées tenues et gardees de point en point; et toutes les aides quelconques qui faites soient fussent recues et distribuées par ceulx qui soient a ce commis par les trois estats, et autorisées par M. le Duc et sur certaines autres conditions et modifications justes et raisonnables et prouffitables et semble que ceste aide eust été moult grant et moult prouffitable, et trop plus que aides de fait de monnoye. Car elle se feroit de volonté du peuple et consentement commun selon Dieu et selon conscience: Et le prouffit que on prent et veult on prendre sur le fait de la monnoye duquel on veult faire le fait de la guerre, et ce soit a la destruction et a esté au temps passé du roy et du royaume et des subjects; Et si se destruit le billon tant par fontures et blanchis comme autrement, ne le fait ne peust durer longuement qu' il ne vienne a destruction si on continue longuement; Et si est tout certain que les gens d'armes ne vouldroient estre contens de leurs gaiges par foible monnoye, &c.

\* Ordonnances des Rois, t. iii. p. 121.

sions, both for the redress of abuses, and the vigorous prosecution of the war against Edward ; and it is difficult to conceive, that men who advised measures so conducive to the public weal could have been the blind instruments of the king of Navarre. But this, as I have already observed, is a problem in history that we cannot hope to resolve. It appears, however, that in a few weeks after the promulgation of this ordinance, the proceedings of the reformers fell into discredit, and their commission of thirty-six, to whom the collection of the new subsidy, the redress of grievances, and, in fact, the whole administration of government had been entrusted, became unpopular. The subsidy produced much less than they had led the people to expect ; briefly, the usual consequence of democratical emotions in a monarchy took place. Disappointed by the failure of hopes unreasonably entertained, and improvidently encouraged, and disgusted by the excesses of the violent demagogues, the nation, especially its privileged classes, who seem to have concurred in the original proceedings of the States General, attached themselves to the party of Charles, and enabled him to quell opposition by force.\* Marcel, provost of the traders, a muni-

\* *Discordiâ motâ, illi tres status ab incepto proposito cessaverunt. Ex tunc enim regni negotia male ire, &c. Continuator Gul. de Nangis in Spicilegio, t. iii. p. 115.*

A very full account of these transactions is given by Sécouse, in his history of Charles the Bad, p. 107. and in his preface to the third volume of the *Ordonnances des Rois*. The reader must make allowance for the usual partialities of a French historian, where an opposition to the reigning prince

eipal magistrate of Paris, detected in the overt execution of a traiterous conspiracy with the king of Navarre, was put to death by a private hand. Whatever there had been of real patriotism in the States General, artfully confounded, according to the practice of courts, with these schemes of disaffected men, suffered in the common obloquy; whatever substantial reforms had been projected, the government threw aside as seditious innovations. Charles, who had assumed the title of regent, found in the States General assembled at Paris in 1359 a very different disposition from that their predecessors had displayed, and publicly restored all the counsellors, whom in the former troubles he had been compelled to discard. Thus the monarchy re-settled itself on its ancient basis; or, more properly, acquired additional stability.

Both John, after the peace of Bretigni, and Charles V. imposed taxes without consent of the States General.\* The latter indeed hardly ever convoked that assembly. Upon his death the contention between the crown and representative body was renewed, and in the first meeting held after the accession of Charles VI. the govern- 1380  
ment was compelled to revoke all taxes illegally imposed since the reign of Philip IV. This is the most remedial ordinance, perhaps, in the history of French legislation. We will, ordain, and grant,

is his subject. A contrary bias is manifested by Boulainvilliers and Mably, whom however it is well worth while to hear.

\* Mably, l. v. c. 5. note 5.

says the king, "that the aids, subsidies and impositions of whatever kind, and however imposed, that have had course in the realm since the reign of our predecessor Philip the Fair, shall be repealed and abolished ; and we will and decree, that by the course which the said impositions have had, we or our successors shall not have acquired any right, nor shall any prejudice be wrought to our people, nor to their privileges and liberties, which shall be re-established in as full a manner as they enjoyed them in the reign of Philip the Fair, or at any time since ; and we will and decree, that if any thing has been done contrary to them since that time to the present hour, neither we nor our successors shall take any advantage therefrom."\* If circumstances had turned out favourably for the cause of liberty, this ordinance might have been the basis of a free constitution, in respect at least of immunity from arbitrary taxation. But the coercive measures of the court and tumultuous spirit of the Parisians produced an open quarrel, in which the popular party met with a decisive failure.

It seems indeed impossible, that a number of deputies elected merely for the purpose of granting money can possess that weight, or be invested in the eyes of their constituents with that awfulness of station, which is required to withstand the royal authority. The States General had no right of redressing

\* *Ordonnances des Rois*, t. vi. p. 564. The ordinance is long, containing frequent repetitions, and a great surplusage of words, intended to give more force, or at least solemnity.



abuses, except by petition; no share in the exercise of sovereignty, which is inseparable from the legislative power. Hence, even in their proper department of imposing taxes, they were supposed incapable of binding their constituents without their specific assent. Whether it were the timidity of the deputies, or false notions of freedom, which produced this doctrine, it was evidently repugnant to the stability and dignity of a representative assembly. Nor was it less ruinous in practice than mistaken in theory. For as the necessary subsidies, after being provisionally granted by the States, were often rejected by their electors, the king found a reasonable pretence for dispensing with the concurrence of his subjects, when he levied contributions upon them.

The States General were convoked but rarely under Charles VI. and VII. both of whom levied money without their concurrence. Yet there are remarkable testimonies under the latter of these princes, that the sanction of national representatives was still esteemed strictly requisite to any ordinance imposing a general tax, however the emergency of circumstances might excuse a more arbitrary procedure. Thus Charles VII. in 1436, declares that he has set up again the aids which had been previously abolished, *by the consent of the three estates*.\* And in the important edict establishing the companies of ordonnance, which is recited to be done by the advice and counsel of the States General assembled at Orleans,

\* Ordonnances des Rois, t. xiii. p. 211.

the forty-first section appears to bear a necessary construction, that no tallage could lawfully be imposed without such consent.\* It is maintained indeed by some writers, that the perpetual taille established about the same time was actually granted by these of 1439, though it does not so appear upon the face of any ordinance.† And certainly this is consonant to the real and recognized constitution of that age.

But the crafty politics of courts in the fifteenth century, enlightened by experience of past dangers, were averse to encountering these great political masses, from which there were, even in peaceful times, some disquieting interference, some testimonies of public spirit and recollections of liberty to apprehend. The kings of France indeed had a resource, which generally enabled them to avoid a convocation of the States General, without violating the national franchises. From provincial assemblies, composed of the three orders, they usually obtained more money than they could have extracted from the common representatives of the nation, and heard less of remonstrance and demand.‡ Languedoc in particular had her own assembly of states, and was rarely called upon to send deputies to the general body, or representatives of what was called

\* Id. p. 312. Boulainvilliers mentions other instances, where the States granted money during this reign. t. iii. p. 70.

† Bréquigny, préface au treizième tome des Ordonnances. Boulainvilliers, t. iii. p. 108.

Villaret, t. xi. p. 270.

the Languedoil. But Auvergne, Normandy, and other provinces belonging to the latter division, had frequent convocations of their respective estates during the intervals of the States General; intervals, which by this means were protracted far beyond that duration to which the exigencies of the crown would otherwise have confined them.\* This was one of the essential differences between the constitutions of France and England, and arose out of the original disease of the former monarchy, the distraction and want of unity, consequent upon the decline of Charlemagne's family, which separated the different provinces in respect of their interests and domestic government from each other.

But the formality of consent, whether by general or provincial states, now ceased to be reckoned indispensable. The lawyers had rarely seconded any efforts to restrain arbitrary power; in their hatred of feudal principles, especially those of territorial jurisdiction, every generous sentiment of freedom was proscribed; or if they admitted that absolute prerogative might require some checks, it was such only as themselves, not the national representatives, should impose. Charles VII. levied money by his own authority. Louis XI. carried this encroachment to the highest pitch of exaction. It was the boast of courtiers, that he first released the kings of France from dependance, (*hors de page*;) or, in other words, that he effectually demolished those barriers,

\* *Ordonnances des Rois*, t. iii. préface.

which however imperfect and ill-placed, had opposed some impediment to the establishment of despotism.\*

The exactions of Louis, however, though borne with patience, did not pass for legal with those upon whom they pressed. Men still remembered their ancient privileges, which they might see with mortification well preserved in England. "There is no monarch or lord upon earth, (says Philip de Comines, himself bred in courts,) who can raise a farthing upon his subjects, beyond his own domains, without their free concession, except through tyranny and violence. It may be objected that in some cases there may not be time to assemble them, and that war will bear no delay; but I reply, (he proceeds,) that such haste ought not to be made, and there will be time enough; and I tell you, that princes are more powerful, and more dreaded by their enemies, when they undertake any thing with the consent of their subjects."†

The States General met but twice during the reign of Louis XI. and on neither occasion for the purpose

\* The preface to the sixteenth volume of *Ordonnances*, before quoted, displays a lamentable picture of the internal situation of France in consequence of excessive taxation, and other abuses. These evils, in a less aggravated degree, continued ever since to retard the improvement, and diminish the intrinsic prosperity, of a country so extraordinarily endowed with natural advantages. Philip de Comines was forcibly struck with the different situation of England and the Netherlands. And Sir John Fortescue has a remarkable passage on the poverty and servitude of the French commons, contrasted with English freemen. Difference of limited and absolute monarchy, p. 17.

† *Mém. de Comines*, l. iv. c. 19.

of granting money. But an assembly in the first year of Charles VIII., the States of Tours in 1484, is too important to be overlooked, as it marks the last struggle of the French nation by its legal representatives for immunity from arbitrary taxation.

A warm contention arose for the regency, upon the accession of Charles VIII. between his aunt Anne de Beaujeu, whom the late king had appointed by testament, and the princes of the blood, at the head of whom stood the duke of Orleans, afterwards Louis XII. The latter combined to demand a convocation of the States General, which accordingly took place. The king's minority and the factions at court seemed no unfavourable omens for liberty. But a scheme was artfully contrived, which had the most direct tendency to break the force of a popular assembly. The deputies were classed in six nations, who debated in separate chambers, and consulted each other only upon the result of their respective deliberations. It was easy for the court to foment the jealousies natural to such a partition. Two nations, the Norman and Burgundian, asserted that the right of providing for the regency, devolved, in the king's minority, upon the States General, a claim of great boldness, and certainly not much founded upon precedents. In virtue of this, they proposed to form a council, not only of the princes, but of certain deputies to be elected by the six nations who composed the States. But the other four, those of Paris, Aquitaine, Languedoc, and Languedoil, (which last comprized the central provinces,) rejected this plan, from which the

two former ultimately desisted, and the choice of counsellors was left to the princes.

A firmer and more unanimous spirit was displayed upon the subject of public reformation. The tyranny of Louis XI. had been so unbounded, that all ranks agreed in calling for redress, and the new governors were desirous, at least by punishing his favourites, to show their inclination towards a change of system. They were very far, however, from approving the propositions of the States General. These went to points which no court can bear to feel touched, though there is seldom any other mode of redressing public abuses; the profuse expense of the royal household, the number of pensions and improvident grants, the excessive establishment of troops. The States explicitly demanded that the taille and other arbitrary imposts should be abolished; and that from thenceforward, "according to the natural liberty of France," no tax should be levied in the kingdom without the consent of the States. It was with great difficulty, and through the skilful management of the court, that they consented to the collection of the taxes payable in the time of Charles VII. with the addition of one fourth, as a gift to the king upon his accession. This subsidy they declare to be granted "by way of gift and concession, and not otherwise, and so as no one should from thenceforth call it a tax, but a gift and concession." And this was only to be in force for two years, after which they stipulated that another meeting should be convoked. But it was little likely that the government would en-

counter such a risk ; and the princes, whose factious views the States had by no means seconded, felt no temptation to urge again their convocation. No assembly in the annals of France seems, notwithstanding some party selfishness arising out of the division into nations, to have conducted itself with so much public spirit and moderation : nor had that country perhaps ever so fair a prospect of establishing a legitimate constitution.\*

V. The right of jurisdiction has undergone changes in France and in the adjacent countries, still more remarkable than those of the legislative power ; and passed through three very distinct stages, as the popular, aristocratic, or regal influence predominated in the political system. The Franks, Lombards and Saxons seem alike to have been jealous of judicial authority ; and averse to surrendering what concerned every man's private right, out of the hands of his neighbours and his equals. Every ten families are supposed to have had a magistrate of their own election ; the tythingman of England, the decanus of France and Lombardy.† Next in order was the Centenarius

\* I am altogether indebted to Garnier for the proceedings of the States of Tours. His account, *Hist. de France*, t. xviii. p. 154—348, is extremely copious, and derived from a manuscript journal. Comines alludes to them sometimes, but with little particularity.

† The Decanus is mentioned by a writer of the ninth age as the lowest species of judge, immediately under the Centenarius. The latter is compared to the Plebanus, or priest of a church, where baptism was performed, and the former to an inferior presbyter. Du Cange, v. Decanus ; and Muratori, *Antiq. Ital. Dissert.* x.

or Hundredary, whose name expresses the extent of his jurisdiction, and who, like the Decanus, was chosen by those subject to it.\* But the authority of these petty magistrates was gradually confined to the less important subjects of legal inquiry. No man, by a capitulary of Charlemagne, could be impleaded for his life, or liberty, or lands, or servants in the hundred court.† In such weighty matters, or by way of appeal from the lower jurisdictions, the count of the district was judge. He indeed was appointed by the sovereign; but his power was checked by assessors, called Scabini, who held their office by the election, or at least the concurrence of the people.‡ These Scabini may be considered as a sort of jury, though bearing a closer analogy to the *Judices Selecti*, who sat with the *Prætor* in the tribunals of Rome. An ultimate appeal seems to have lain to the Count Palatine, an officer of the royal house-

\* It is evident from the Capitularies of Charlemagne, Baluze, t. i. p. 426 and 466, that the *Centenarii* were elected by the people; that is, I suppose, the free-holders.

† *Ut nullus homo in placito centenarii neque ad mortem, neque ad libertatem suam amittendam, aut ad res reddendas vel mancipia judicetur. Sed ista aut in præsentia comitis vel missorum nostrorum judicentur. Capit. A. D 812. Baluz. p. 497.*

‡ Baluzii Capitularia, p. 466. Muratori, Dissert. 10. Du Cange, v. Scabini. These Scabini, sometimes called *Rachimburgii*, may be traced by the light of charters down to the eleventh century. *Recueil des Historiens*, t. xi. préface, p. 186. There is, in particular, a decisive proof of their existence in 918, in a record which I have already had occasion to quote. *Vaissette, Hist. de Languedoc*, t. ii. Appendix, p. 56.



hold; and sometimes causes were decided by the sovereign himself.\* Such was the original model of judicature; but as complaints of injustice and neglect were frequently made against the courts, Charlemagne, desirous on every account to controul them, appointed special judges, called *Missi Regii*, who held assizes from place to place, inquired into abuses and mal-administration of justice, enforced its execution, and expelled inferior judges from their offices for misconduct.†

This judicial system was gradually superseded by one founded upon totally different principles, those of feudal privilege. It is difficult to ascertain the progress of territorial jurisdiction. In many early charters of the French kings, beginning with one of Dagobert I. in 630, we find inserted in their grants of land an immunity from the entrance of the ordinary judges, either to hear causes, or to exact certain dues accruing to the king and to themselves. These charters indeed relate to church lands, which, as it seems implied by a law of Charlemagne, universally possessed an exemption from ordinary jurisdiction.

\* Du Cange, Dissertation 14. sur Joinville; and Glossary, v. *Comites Palatini*; *Mém. de l'Acad. des Inscript.* t. xxx. p. 590. Louis the Debonair gave one day in every week to hearing causes; but his subjects were required not to have recourse to him, unless where the *Missi* or the counts had not done justice. Baluze, t. i. p. 668. Charles the Bald expressly reserves an appeal to himself from the inferior tribunals. *Capit.* 869. t. ii. p. 215. In his reign, there was at least a claim to sovereignty preserved.

† For the jurisdiction of the *Missi Regii*, besides the *Capitularies* themselves, see Muratori's eighth Dissertation. They

A precedent, however, in Marculfus leads us to infer a similar immunity to have been usual in gifts to private persons.\* These rights of justice in the beneficiary tenants of the crown are attested in several passages of the capitularies. And a charter of Louis I. to a private individual contains a full and exclusive concession of jurisdiction over all persons resident within the territory, though subject to the appellant controul of the royal tribunals.† It is obvious, indeed, that an exemption from the regular judicial authorities implied or naturally led to a right of administering justice in their place. But this could at first hardly extend beyond the tributaries or villeins who cultivated their master's soil, or, at most, to free persons without property, resident in the territory. To determine their quarrels, or chastise their offen-

went their circuits four times a year. Capitul. A. D. 812. A. D. 823. A vestige of this institution long continued in the province of Auvergne, under the name *Grands Jours d'Auvergne*; which Louis XI. revived in 1479. Garnier, *Hist. de France*. t. xviii. p. 458.

\* Marculfi *Formulæ*, l. i. c. 17.

† Et nullus comes, nec vicarius, nec juniores eorum, nec ullus judex publicus illorum homines, qui super illorum apensione habitant, aut in illorum proprio, distringere nec judicare præsumant; sed Johannes et filii sui, et posteritas illorum, illi eos judicent et distringant. Et quicquid per legem judicaverint, stabilis permaneat. Et si extra legem fecerint, per legem emendent. Baluzii *Capitularia*, t. ii. p. 1405.

This appellant controul was preserved by the capitulary of Charles the Bald, quoted already, over the territorial, as well as royal tribunals. Si aliquis episcopus, vel comes ac vassus noster suo homini contra rectum et justitiam fecerit, et si inde ad nos reclamaverit, sciat quia, sicut ratio et lex est, hoc emendare faciemus.

ces, was no very illustrious privilege. An alodial freeholder could own no jurisdiction but that of the king. It was the general prevalence of sub-infeudation, which gave importance to the territorial jurisdictions of the nobility. For now the military tenants, instead of repairing to the county-court, sought justice in that of their immediate lord; or rather the count himself, become the suzerain instead of the governor of his district, altered the form of his tribunal upon the feudal model.\* A system of procedure so congenial to the spirit of the age spread universally over France and Germany. The tribunals of the king were forgotten like his laws; the one retaining as little authority to correct, as the other to regulate, the decisions of a territorial judge. The rules of evidence were superseded by that monstrous birth of ferocity and superstition, the judicial combat, and the maxims of law reduced to a few capricious customs, which varied in almost every barony.

These rights of administering justice were possessed by the owners of fiefs in very different degrees; and, in France, were divided into the high, the middle, and the low jurisdiction.† The first species

\* We may perhaps infer, from a capitulary of Charlemagne in 809, that the feudal tenants were already employed as assessors in the administration of justice, concurrently with the Scabini, or Rachinburgii mentioned above. *Ut nullus ad placitum venire cogatur, nisi qui causam habet ad quærendum, exceptis scabinis et vassallis comitum.* Baluz. *Capitularia*, t. i. p. 465.

† Velly, t. vi. p. 131. Denisart, Houard, and other law-books.

alone (la haute justice) conveyed the power of life and death; it was inherent in the baron and the chatelain, and sometimes enjoyed by the simple vassor. The lower jurisdictions were not competent to judge in capital cases, and consequently forced to send such criminals to the court of the superior. But in some places, a thief taken in the fact might be punished with death by a lord who had only the low jurisdiction. In England this privilege was known by the uncouth terms of *Infangthef* and *Outfangthef*. The high jurisdiction, however, was not very common in this country, except in the chartered towns.\*

Several customs rendered these rights of jurisdiction far less instrumental to tyranny than we might infer from their extent. While the counts were yet officers of the crown, they frequently appointed a deputy, or viscount to administer justice. Ecclesiastical lords, who were prohibited by the canons

\* A strangely cruel privilege was possessed in Aragon by the lords who had not the higher jurisdiction, and consequently could not publicly execute a criminal; that of starving him to death in prison. This was established by law in 1247. *Si vassallus domini non habentis merum nec mixtum imperium, in loco occiderit vassallum, dominus loci potest eum occidere fame, frigore et siti. Et quilibet dominus loci habet hanc jurisdictionem necandi fame, frigore et siti in suo loco, licet nullam aliam jurisdictionem criminalem habeat.* Du Cange, *voc. Fame necare.*

It is remarkable, that the Neapolitan barons had no criminal jurisdiction, at least of the higher kind, till the reign of Alfonso, in 1443, who sold this destructive privilege, at a time when it was almost abolished in other kingdoms. Giannone, l. xxii. c. 5. and l. xxvi. c. 6.

from inflicting capital punishment, and supposed to be unacquainted with the law followed in civil courts, or unable to enforce it, had an officer by name of advocate, or vidame, whose tenure was often feudal and hereditary. The viguiers (vicarii,) bailiffs, provosts, and seneschals of lay lords were similar ministers, though not in general of so permanent a right in their offices, or of such eminent station as the advocates of monasteries. It seems to have been an established maxim, though perhaps only in later times, that the lord could not sit personally in judgment, but must entrust that function to his bailiff and vassals.\* According to the feudal rules, the lord's vassals or peers of his court were to assist at all its proceedings. "There are some places, says Beaumanoir, where the bailiff decides in judgment, and others, where the vassals of the lord decide. But even where the bailiff is the judge, he ought to advise with the most prudent, and determine by their advice; since thus he shall be most secure if an appeal is made from his judgment."† And indeed the presence of these assessors was so essential to all territorial jurisdiction, that no lord, to whatever rights of justice his fief might intitle him, was qualified to exercise them, un-

\* Boutillier, in his *Somme Rurale*, written near the end of the fourteenth century, asserts this positively. Il convient quilz facent jugier par aultre que par eulx, cest a savoir par leurs hommes feudaux a leur semonce et *conjure* [?] ou de leurbailiff ou lieutenant, et ont ressort a leur souverain. fol. 3.

† *Coûtumes de Beauvoisis*, p. 11.

less he had at least two vassals to sit as peers in his court.\*

These courts of a feudal barony or manor required neither the knowledge of positive law, nor the dictates of natural sagacity. In all doubtful cases, and especially where a crime not capable of notorious proof was charged, the combat was awarded; and God, as they deemed, was the judge.† The nobleman fought on horseback, with all his arms of attack and defence; the plebian on foot, with his club and target. The same

\* It was lawful, in such case, to borrow the vassals of the superior lord. *Thaumassière sur Beaumanoir*, p. 375. See *Du Cange*, v. *Pares*: an excellent article, and *Placitum*.

In England, a manor is extinguished, at least as to jurisdiction, when there are not two freeholders subject to escheat left as suitors to the court-baron. Their tenancy must therefore have been created before the statute of *Quia emptores*, 18 *Ewd. I.* since which no new estate in fee simple can be held of the lord, nor, consequently, be liable to escheat to him.

† Trial by combat does not seem to have established itself completely in France, till ordeals went into disuse, which Charlemagne rather encouraged, and which, in his age, the clergy for the most part approved. The former species of decision may however be met with under the first Merovingian kings, (*Greg. Turon. l. vii. c. 19. l. x. c. 10*) and seems to have prevailed in Burgundy. It is established by the laws of the Alemanni or Swabians. *Baluz. t. i. p. 80*. It was always popular in Lombardy. *Luitprand*, king of the Lombards, says in one of his laws: *Incerti summus de judicio Dei, et quosdam audivimus per pugnam sine juetâ causâ suam causam perdere. Sed propter consuetudinem gentis nostræ Langobardorum legem impiam vetare non possumus. Muratori, Script. Rerum Italicarum, t. ii. p. 65*. *Otho II.* established it in all disputes concerning real property; and there is a famous case, where the right of representation, or preference of the son of a deceased elder child to his uncle in succession to his grandfather's estate, was settled by this test.

were the weapons of the champions, to whom women and ecclesiastics were permitted to entrust their rights.\* If the combat was intended to ascertain a civil right, the vanquished party of course forfeited his claim, and paid a fine. If he fought by proxy, the champion was liable to have his hand struck off; a regulation necessary perhaps to obviate the corruption of these hired defenders. In criminal cases, the appellant suffered, in the event of defeat, the same punishment which the law awarded to the offence of which he accused his adversary.† Even where the cause was more peaceably tried, and brought to a regular adjudication by the court, an appeal for false judgement might indeed be made to the suzerain, but it could only be tried by battle.‡ And in this, the appellant, if he would impeach the concurrent judgement of the court below, was compelled to meet successively in combat every one of its members; unless he should vanquish them all within the day, his life, if he escaped from so many hazards, was forfeited to the law. If fortune or miracle should make him conqueror in every contest the judges were equally subject to death, and their court forfeited their jurisdiction for ever. A less perilous mode of appeal was to

\* For the ceremonies of trial by combat, see Houard, *Anciennes Loix Françaises*, t. i. p. 264. Velly, t. vi. p. 106. *Recueil des Historiens*, t. xi. préface, p. 189. Du Cange, v. *Duellum*. The great original authorities are the *Assises de Jérusalem*, c. 104. and *Beaumanoir*, c. 31.

† *Beaumanoir*, p. 315.

‡ *Idem*, c. 61. In England the appeal for false judgement to the king's court was not tried by battle. *Glanvil* l. xii. c. 7.

call the first judge who pronounced a hostile sentence into the field. If the appellant came off victorious in this challenge, the decision was reversed, but the court was not impeached.\* But for denial of justice, that is, for a refusal to try his suit, the plaintiff repaired to the court of the next superior lord, and supported his appeal by testimony.† Yet, even here, the witnesses might be defied, and the pure stream of justice turned at once into the torrent of barbarous contest.‡

Such was the judicial system of France, when St. Louis enacted that great code, which bears the name of his Establishments. The rules of civil and criminal procedure, as well as the principles of legal decisions, are there laid down with much detail. But that incomparable prince, unable to overthrow the judicial combat, confined himself to discouraging it by the example of a wiser jurisprudence. It was abolished throughout the royal domains. The bailiffs and seneschals who rendered justice to the king's immediate subjects were bound to follow his own

\* *Idem*, c. 61.

† *Id.* p. 315. The practice was to challenge the *second* witness, since the testimony of one was insufficient. But this must be done before he completes his oath, says Beaumanoir, for after he has been sworn, he must be heard and believed. p. 316. No one was bound, as we may well believe, to be a witness for another, in cases where such an appeal might be made from his testimony.

‡ Mably is certainly mistaken in his opinion, that appeals for denial of justice were not older than the reign of Philip Augustus. (*Observations sur l'Hist. de F. l. iii. c. 3.*) Before this time, the vassal's remedy, he thinks, was to make war



laws. He not only received appeals from their sentences in his own court of peers, but listened to all complaints with a kind of patriarchial simplicity. "Many times, says Joinville, I have seen the Saint, after hearing mass in the summer season, lay himself at the foot of an oak in the the wood of Vincennes, and make us all sit round him; when those who would, came and spake to him, without let of any officer, and he would ask aloud if there were any present who had suits, and when they appeared, would

upon his lord. And this may probably have been frequently practised. Indeed it is permitted, as we have seen, by the code of St. Louis. But those who were not strong enough to adopt this dangerous means of redress, would surely avail themselves of the assistance of the suzerain, which in general would be readily afforded. We find several instances of the king's interference for the redress of injuries in Suger's life of Louis VI. That active and spirited prince, with the assistance of his still more illustrious biographer, recovered a great part of the royal authority, which had been reduced to the lowest ebb in the long and slothful reign of his father, Philip I. One passage, especially, contains a clear evidence of the appeal for denial of justice, and consequently refutes Mably's opinion. In 1105, the inhabitants of St. Sévère, in Berri, complain of their lord Humbald, and request the king *aut ad exequendam justitiam cogere, aut jure pro injuriâ castrum lege Salicâ amittere*. I quote from the preface to the fourteenth volume of the *Recueil des Historiens*, p. 44. It may be noticed by the way, that *lex Salica* is here used for the feudal customs; in which sense I believe it not unfrequently occurs. Many proofs might be brought of the interposition of both Louis VI. and VII. in the disputes between their barons and *arrière vassals*. Thus the war between the latter and Henry II. of England, in 1166, was occasioned by his entertaining a complaint from the count of Auvergne, without waiting for the decision of Henry, as duke of Guienne. Velly, t. iii. p. 190. Lyttleton's Henry II. vol. ii. p. 448. *Recueil des Historiens*, *ubi supra* p. 49.

bid two of his bailiffs determine their causes upon the spot.”\*

The influence of this new jurisprudence established by St. Louis, combined with the great enhancement of the royal prerogatives in every other respect, produced a rapid change in the legal administration of France. Though trial by combat occupies a considerable space in the work of Beaumanoir, written under Philip the Bold, it was already much limited. Appeals for false judgement might sometimes be tried, as he expresses it, *par erremens de plait*, that is, I presume where the alledged error of the court below was in matter of law. For wager of battle was chiefly intended to ascertain controverted facts.† So where the suzerain saw clearly that the judgement of the inferior court was not right, he ought not to permit the combat. Or if the plaintiff, even in the first instance, could produce a record or a written obligation; or if the fact before the court was notorious, there was no room for battle.‡ It would be a hard thing says Beaumanoir, that if one had killed my near relation in open day before many credible persons, I should be compelled to fight in order to prove his death. This reflection is the dictate of common sense, and shews that the prejudice in favour of judicial combat was dying away. In the *assizes de Jérusalem*, a monument of customs

\* Collection des Mémoires, t. i. p. 25.

† Beaumanoir, p. 22.

‡ Id. p. 314.

two hundred years earlier than the age of Beaumanoir, we find little mention of any other mode of decision. The compiler of that book thinks it would be very injurious, if no wager of battle were to be allowed against witnesses in causes affecting succession; since otherwise every right heir might be disinherited, as it would be easy to find two persons who would perjure themselves for money if they had no fear of being challenged for their testimony.\* This passage indicates the real causes of preserving the judicial combat; systematic perjury in witnesses, and want of legal discrimination in judges.

It was, in all civil suits at the discretion of the litigant parties, to adopt the law of the establishments, instead of resorting to combat.† As gentler manners prevailed, especially among those who did not make arms their profession, the wisdom and equity of the new code was naturally preferred. The superstition which had originally led to the latter, lost its weight through experience and the uniform opposition of the clergy. The same superiority of just and settled rules over fortune and violence, which had forwarded the encroachments of the ecclesiastical courts, was now manifested in those of the king. Philip Augustus, by a famous ordinance in 1190, first established royal courts of justice, held by the officers called bailiffs or seneschals, who acted as the king's lieutenants in his domains.‡ Every barony,

\* c. 167.

† Beaumanoir, p. 309.

‡ Ordonnances des Rois, t. i. p. 18.

as it became reunited to the crown, was subjected to the jurisdiction of one of these officers, and took the name of a bailliage or a seneschaussée; the former name prevailing most in the northern, the latter in the southern provinces. The vassals whose lands depended upon, or, in feudal language, moved from the superiority of this fief, were obliged to submit to the ressort or supreme appellant jurisdiction of the royal court established in it.\* This began rapidly to encroach upon the feudal rights of justice. In a variety of cases, termed royal, the territorial court was pronounced incompetent; they were reserved for the judges of the crown: and, in every case, unless the defendant excepted to the jurisdiction, the royal court might take cognizance of a suit, and decide it in exclusion of the feudal judicature.† The nature of cases reserved under the name of royal was kept in studied ambiguity, under cover of which the judges of the crown perpetually strove to multiply them. Louis X., when requested by the barons of Champagne to explain what was meant by royal cases, gave this mysterious definition: Every thing which by right or custom ought exclusively to come under the cognizance of a sovereign prince.‡ Vassals were permitted to complain in the first instance to the king's court, of injuries committed by their

\* Du Cange, v. Ballivi. *Mém. de l'Acad. des Inscriptions*, t. xxx. p. 603. Mably, l. iv. c. 4. Boulainvilliers. t. ii. p. 22.

† Mably, Boulainvilliers, Montlosier, t. i. p. 184.

‡ Ordonnances des Rois, p. 606.

lords. These rapid and violent encroachments left the nobility no alternative but armed combinations to support their remonstrances. Philip the Fair bequeathed to his successor the task of appeasing a storm, which his own administration had excited. Leagues were formed in most of the northern provinces for the redress of grievances, in which the third estate, oppressed by taxation, united with the vassals whose feudal privileges had been infringed. Separate charters were granted to each of these confederacies by Louis Hutin, which contain many remedial provisions against the grosser violations of ancient rights, though the crown persisted in restraining territorial jurisdictions.\* Appeals became more common for false judgement, as well as denial of right; and in neither was the combat permitted. It was still, however, preserved in accusations of heinous crimes, unsupported by any testimony but that of the prosecutor, and was never abolished by any positive law, either in France or England. But instances of its occurrence are not frequent even in the fourteenth century; and one of these, rather remarkable in its circumstances, must have had a tendency

\* Hoc perpetuo prohibemus edicto, ne subditi, seu justiciabiles prælatorum aut baronum nostrorum, aut aliorum subjectorum nostrorum trahantur in causam coram nostris officialibus, nec eorum causæ, nisi in casu ressorti, in nostris curiis audiantur, vel in alio casu ad nos pertinenti. *Ordonnances des Rois*, t. i. p. 362. This ordinance is of Philip the Fair, in 1302; but those passed under Louis Hutin are to the same effect. They may be read at length in the *Ordonnances des Rois*; or abridged by Boulainvilliers, t. ii. p. 94.

to explode the remaining superstition which had preserved this mode of decision.\*

The supreme council, or court of peers, to whose deliberative functions I have already adverted, was also the great judicial tribunal of the French crown from the accession of Hugh Capet. By this alone the barons of France, or tenants in chief of the king, could be judged. To this court appeals for denial of justice were referred. It was originally composed, as has been observed, of the feudal vassals, co-equals of those who were to be tried by it; and also of the household officers, whose right of concurrence, however anomalous, was extremely ancient.† But after the business of the court came to increase through the multiplicity of appeals, especially from the bailiffs established by Philip Augustus in the royal domains, the barons found neither leisure nor capacity for the ordinary administration of justice, and reserved their attendance for occasions where

\* Philip IV. restricted trial by combat to cases where four conditions were united. The crime must be capital: Its commission certain: The accused greatly suspected: And no proof to be obtained by witnesses. Under these limitations, or at least some of them, for it appears that they were not all regarded, instances occur for some centuries.

See the singular story of Carouges and Le Gris, to which I allude in the text. Villaret, t. xi. p. 421. Trial by combat was allowed in Scotland exactly under the same conditions as in France. Pinkerton's Hist. of Scotl. vol. i. p. 66.

† This court had always, it must be owned, a pretty considerable authority over some of the royal vassals. Even in Robert's reign, the count of Anjou and another nobleman of less importance were summoned before it. *Recueil des Historiens*, t. x. p. 473. 476.

some of their own order were implicated in a criminal process. St. Louis, anxious for regularity and enlightened decisions, made a considerable alteration by introducing some counsellors of inferior rank, chiefly ecclesiastics, as advisers of the court, though, as is supposed, without any decisive suffrage. The court now became known by the name of parliament. Registers of its proceedings were kept, of which the earliest extant are of the year 1254. It was still perhaps in some degree ambulatory; but by far the greater part of its sessions in the thirteenth century were at Paris. The counsellors nominated by the king, some of them clerks, others of noble rank, but not peers of the ancient baronage, acquired insensibly a right of suffrage.\*

An ordinance of Philip the Fair in 1302 is generally supposed to have fixed the seat of the parliament at Paris, as well as altered its constituent parts.† Perhaps a series of progressive changes has been referred to a single epoch. But whether by virtue of this ordinance, or of more gradual events, the character of the old feudal court was nearly obliterated in that of the parliament of Paris. A sys-

\* Boulainvilliers, t. ii. p. 29. 44. Mably, l. iv. c. 2. Encyclopédie, Art. Parlement. Mém. de l'Acad. des Inscript. t. xxx. p. 603. The great difficulty I have found in this investigation will plead my excuse, if errors are detected.

† Pasquier (Recherches de la France, l. ii. c. 3.) published this ordinance, which indeed, as the editor of *Ordonnances des Rois*, t. i. p. 547. observes, is no ordinance, but a regulation for the execution of one previously made; nor does it establish the residence of the parliament at Paris.

tematic tribunal took the place of a loose aristocratic assembly. It was to hold two sittings in the year, each of two months duration; it was composed of two prelates, two counts, thirteen clerks, and as many laymen. Great changes were made afterwards in this constitution. The nobility, who originally sat there, grew weary of an attendance, which detained them from war, and from their favourite pursuits at home. The bishops were dismissed to their necessary residences upon their sees.\* As they withdrew, that class of regular lawyers, originally employed, as it appears, in the preparatory business without any decisive voice, came forward to the higher places, and established a complicated and tedious system of procedure, which was always characteristic of French jurisprudence. They introduced at the same time a new theory of absolute power, and unlimited obedience. All feudal privileges were treated as encroachments on the imprescriptible rights of monarchy. With the natural bias of lawyers in favour of prerogative conspired that of the clergy, who fled to the king for refuge against the tyranny of the barons. In the civil and canon laws a system of political maxims was found, very uncongenial to the feudal customs. The French lawyers of the fourteenth and fifteenth centuries frequently give their

\* Velly, *Hist. de France*, t. vii. p. 303. and *Encyclopédie*, Art. *Parlement*, are the best authorities I have found. There may very possibly be superior works on this branch of the French constitution, which have not fallen into my hands.



king the title of Emperor, and treat disobedience to him as sacrilege.\*

But among these lawyers, although the general tenants of the crown by barony ceased to appear, there still continued to sit a more eminent body, the lay and spiritual peers of France, representatives, as it were, of that ancient baronial aristocracy. It is a very controverted question, at what time this exclusive dignity of peerage, a word obviously applicable by the feudal law to all persons co-equal in degree of tenure, was reserved to twelve vassals. At the coronation of Philip Augustus, in 1179, we first perceive the six great feudataries, dukes of Burgundy, Normandy, Guienne, counts of Toulouse, Flanders, Champagne, distinguished by the offices they performed in that ceremony. It was natural indeed that by their princely splendour and importance, they should eclipse such petty lords as Bourbon and Coucy, however equal in quality of tenure. During the reign of Philip Augustus, six ecclesiastical peers, the duke-bishops of Rheims, Laon, and Langres, the count bishops of Beauvais, Chalons, and Noyon, were added, as a sort of parallel or counterpoise.† Their precedence does not, however, appear to have carried with it any other privilege, at least in judicature, than any other barons enjoyed. But their pre-eminence being fully confirmed, Philip the Fair set the precedent of augmenting their original number

\* Mably, iv. c. 2. note 10.

† Velly, t. ii. p. 287. t. iii. p. 221. t. iv. p. 41.

by conferring the dignity of peerage on the duke of Britany and the count of Artois.\* Other creations took place subsequently; but they were confined, during the period comprized in this work, to princes of the royal blood. The peers were constant members of the parliament, from which other vassals holding in chief were never perhaps excluded by law, but their attendance was rare in the fourteenth century, and soon afterwards ceased altogether.†

A judicial body, composed of the greatest nobles in France, as well as of learned and eminent lawyers, must naturally have soon become politically important. Notwithstanding their disposition to enhance every royal prerogative, as opposed to feudal privileges, the parliament was not disinclined to see its own protection invoked by the subject. It appears by an ordinance of Charles V. in 1371, that the nobility of Languedoc had appealed to the parliament of Paris against a tax imposed by the king's authority; and this, at a time when the French constitution did not recognize the levying of money without consent of the States General, must have been a just ground of appeal, though the present ordinance annuls and overturns it.‡ During the tempests of Charles VI.'s unhappy reign, the parliament acquired a more decided authority, and held, in some degree, the balance between the contending factions of Orleans and Burgundy. This influence was partly owing to one

\* Velly, t. vii. p. 97.

† Encyclopédie, Art. Parlement. p. 6.

‡ Mably, l. v. c. 5 note 5.

remarkable function attributed to the parliament, which raised it much above the level of a merely political tribunal, and has at various time wrought striking effects in the French monarchy.

The few ordinances enacted by kings of France in the twelfth and thirteenth centuries were generally by the advice of their royal council, in which probably they were solemnly declared, as well as agreed upon. But after the gradual revolution of government, which took away from the feudal aristocracy all controul over the king's edicts, and substituted a new magistracy for the ancient baronial court, these legislative ordinances were commonly drawn up by the interior council, or what we may call the ministry. They were in some instances promulgated by the king in parliament. Others were sent thither for registration, or entry upon their records. This formality was by degrees, if not from the beginning, deemed essential to render them authentic and notorious, and therefore indirectly gave them the sanction and validity of a law.\* Such at least appears to have been the received doctrine before the end of the fourteenth century. It has been contended by Mably among other writers, that at so early an epoch, the parliament of Paris did not enjoy, nor even claim to itself, that anomalous right of judging the expediency of edicts proceeding from the king, and consequently of partaking in his legislative authority, which afterwards so remarkably modified the absoluteness of

\* Encyclopédie, Art. Parlement.  
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his power. In the fifteenth century, however, it certainly manifested pretensions of this nature ; first by registering ordinances in such a manner as to testify its own unwillingness and disapprobation, of which one instance occurs as early as 1418, and another in 1443 ; and, afterwards, by remonstrating against, and delaying the registration of laws, which it deemed inimical to the public interest. A conspicuous proof of this spirit was given in their opposition to Louis XI. when repealing the Pragmatic Sanction of his father ; an ordinance essential, in their opinion, to the liberties of the Gallican church. In this instance they ultimately yielded ; but at another time they persisted in a refusal to enregister letters containing an alienation of the royal domain.\*

The counsellors of parliament were originally appointed by the king ; and they were even changed according to circumstances. Charles V. made the first alteration by permitting them to fill up vacancies by election, which usage continued during the next reign. Charles VII. resumed the nomination of fresh members upon vacancies. Louis XI. even displaced actual counsellors. But in 1468, whether aware that such a proceeding exposed him to censure, or from caprice, he published a most important ordinance, declaring the presidents and counsellors of parliament immoveable, except in case of legal forfeiture.† This extraordinary measure of conferring

\* Mably, l. vi. c. 5. note 19 and 21. Garnier, *Hist. de France*, t. xvii. p. 219. 380.

† Villaret, t. xiv. p. 231. *Encyclopédie*, Art. *Parlement*.

independence on a body, which had already displayed a consciousness of its eminent privilege by opposing the registration of his edicts, is perhaps to be deemed a proof of that short-sightedness as to points of substantial interest, so usually found in crafty men. But, be this as it may, there was formed in the parliament of Paris an independent power, not emanating from the royal will, nor liable, except through force, to be destroyed by it; which, in later times, became almost the sole depository, if not of what we should call the love of freedom, yet of public spirit and attachment to justice. France, so fertile of great men in the sixteenth and seventeenth centuries, might better spare, perhaps, from her annals any class and description of them, than her lawyers. Doubtless the parliament of Paris, with its prejudices and narrow views, its high notions of loyal obedience, so strangely mixed up with remonstrances and resistance, its anomalous privilege of objecting to edicts, hardly approved by the nation who did not participate in it, and overturned with facility by the king, whenever he thought fit to exert the sinews of his prerogative, was indeed poorly substituted for that co-ordinate sovereignty, that equal concurrence of national representatives in legislation, which has long been the exclusive pride of our government, and to which the States General of France, in their best days, had never aspired. No man of sane understanding would desire to revive institutions, both uncongenial to modern opinions, and to the natural order of society. Yet the name of the parliament of

Paris must ever be respectable. It exhibited, upon various occasions, virtues from which human esteem is as inseparable, as the shadow from the substance; a severe adherence to principles, an unaccommodating sincerity, individual disinterestedness and consistency. Whether indeed these qualities have been so generally characteristic of the French people, as to afford no peculiar commendation to the parliament of Paris, it is rather for the observer of the present day, than the historian of past times to decide.\*

The principal causes that operated in subverting the feudal system may be comprehended under three distinct heads; the increasing power of the crown, the elevation of the lower ranks, and the decay of the feudal principle.

It has been my object in the last pages to point out the acquisitions of power by the crown of France in respect of legislative and judicial authority. The

\* The province of Languedoc, with its dependencies of Quercy and Rouergue, having belonged almost in full sovereignty to the counts of Toulouse, was not perhaps subject to the feudal resort, or appellan jurisdiction of any tribunal at Paris. Philip the Bold, after its reunion to the crown, established the parliament of Toulouse, a tribunal without appeal, in 1280. This was however suspended from 1291 to 1443, during which interval the parliament of Paris exercised an appellan jurisdiction over Languedoc. Vaisette, *Hist. de Lang.* ti iv. p. 60. 71. 524. Sovereign courts or parliaments were established by Charles VII. at Grenoble for Dauphiné and by Louis XI. at Bordeaux and Dijon for Guienne and Burgundy. The parliament of Rouen is not so ancient. These institutions rather diminished the resort of the parliament of Paris, which had extended over Burgundy, and, in time of peace, over Guienne.

principal augmentations of its domain have been historically mentioned in the last chapter; but the subject may here require further notice. The French kings naturally acted upon a system, in order to recover those possessions, which the improvidence or necessities of the Carlovingian race had suffered almost to fall away from the monarchy. This course, pursued with tolerable steadiness for two or three centuries, restored their effective power. By escheat or forfeiture, by bequest or purchase, by marriage or succession, a number of fiefs were merged in their increasing domain.\* It was part of their policy to

\*The word domain is calculated, by a seeming ambiguity, to perplex the reader of French history. In its primary sense, the domain or demesne (*dominicum*) of any proprietor was confined to the lands in his immediate occupation; excluding those of which his tenants, whether in fief or villenage, whether for a certain estate or at will, had an actual possession, or, in our law language, pernaney of the profits. Thus the compilers of Domesday-Book distinguish, in every manor, the lands held by the lord in demesne from those occupied by his villeins or other tenants. And, in England, the word, if not technically, yet in use is still confined to this sense. But in a secondary acceptation, more usual in France, the domain comprehended all lands for which rent was paid (*censives*) and which contributed to the regular annual revenue of the proprietor. The great distinction was between lands in demesne, and those in fief. A grant of territory, whether by the king or another lord, comprizing as well domanial estates and tributary towns, as feudal superiorities, was expressed to convey 'in dominico quod est in dominico, et in feodo quod est in feodo.' Since, therefore, fiefs, even those of the vavassors or inferior tenantry, were not part of the lord's domain, there is, as I said, an apparent ambiguity in the language of historians, who speak of the re-union of provinces to the royal domain. This ambiguity however is rather apparent than real. When

obtain possession of *arriere-fiefs*, and thus to become tenants to their own barons. In such cases, the king was obliged, by the feudal duties, to perform homage, by proxy to his subject, and engage himself to the subject, and engage himself to the service of his fief. But for every political purpose, it is evident that the lord could have no command over so formidable a vassal.\*

The re-union of so many fiefs was attempted to be secured by a legal principle, that the domain was inalienable and imprescriptible. This became at length a fundamental maxim in the law of France. But it does not seem to be much older than the reign of Philip V. who, in 1318, revoked the alienations of his predecessors, nor was it thoroughly established, even in theory, till the fifteenth century.†

*Alienation* the duchy of Normandy, for example, is said to have been united by Philip Augustus to his domain, we are not, of course, to suppose that the soil of that province became the private estate of the crown. It continued, as before, in the possession of the Norman barons and their sub-vassals, who had held their estates of the dukes. But it is meant only, that the king of France stood exactly in the place of the duke of Normandy, with the same rights of possession over lands absolutely in demesne, of rents and customary payments from the burgesses of towns and tenants in rotture or villenage, and of feudal services from the military vassals. The immediate superiority, and the immediate ressort, or jurisdiction, over these devolved to the crown; and thus the duchy of Normandy, considered as a fief, was re-united, or more properly, merged in the royal domain, though a very small part of the territory might become truly domanial.

\* See a memoir on the acquisition of *arriere-fiefs* by the kings of France, in *Mém. de l'Acad. des Inscript.* t. I. by M. Dacier.

† Préface au 15ième tome des *Ordonnances*, par M. de Pastoret.



tions, however, were certainly very repugnant to the policy of Philip Augustus and St. Louis. But there was one species of infeudation, so consonant to ancient usage and prejudice, that it could not be avoided upon any suggestions of policy. This was the investiture of younger princes of the blood with considerable territorial apanages. It is remarkable, that the epoch of apanages on so great a scale was the reign of St. Louis, whose efforts were constantly directed against feudal independence. Yet he invested his brothers with the counties of Poitou, Anjou and Artois, and his sons with those of Clermont and Alençon. This practice, in later times, produced very mischievous consequences.

Under a second class of events that contributed to destroy the spirit of the feudal system, we may reckon the abolition of villenage; the increase of commerce, and consequent opulence of merchants and artizans; and especially the institution of free cities and boroughs. This is one of the most important and interesting steps in the progress of society during the middle ages, and deserves particular consideration.

The provincial cities under the Roman empire enjoyed, as is well known, a municipal magistracy and the right of internal regulation. It would not have been repugnant, perhaps, to the spirit of the Frank and Gothic conquerors, to have left them in possession of these privileges. But there seems no satisfactory proof that they were preserved either in

France or in Italy;\* or, if they existed at all, they were swept away, in the former country, during the confusion of the ninth century, which ended in the establishment of the feudal system. Every town, except within the royal domains, was subject to some lord. In episcopal cities, the bishop possessed a considerable authority; and in many, there was a class of resident nobility. It is probable, that the proportion of freemen was always greater than in the country; some sort of retail trade, and even of manufacture, must have existed in the rudest of the middle ages, and consequently some little capital was required for their exercise. Nor was it so easy to oppress a collected body, as the scattered and dispirited cultivators of the soil. Probably therefore the condition of the towns was at all times by far the more tolerable servitude; and they might enjoy several immunities by usage, before the date of those charters which gave them sanction. In Provence, where the feudal star shone with a less powerful ray, the cities, though not independently governed, were more flourishing than the French. Marseilles, in the beginning of the fourth age, was able to equip powerful

\* M. de Bréquigny says, that Lyons and Rheims can trace their own municipal government some centuries higher than the establishment of communes by Louis VI. The former city, which indeed was not French at that time, never had a charter of incorporation. *Ordonnances des Rois*, t. xi. préface, p. 4. This preface contains an excellent account of the origin and privileges of chartered towns in France.

navies, and to share in the wars of Genoa and Pisa against the Saracens of Sardinia.\*

The earliest charters of community granted to towns in France have been commonly referred to the time of Louis the Sixth; though it is not improbable, that some cities in the south had a municipal government by custom, if not by grant, at an earlier period.† Noyon, St. Quentin, Laon, and Amiens appear to have been the first that received emancipation at the hands of this prince.‡ The chief

\* There were more freemen in Provence, says an historian of the country, than in any other part of France; and the revolutions of the monarchy being less felt than elsewhere, our towns naturally preserved their municipal government. I have borrowed this quotation from Heeren, *Essai sur l'Influence des Croisades*, p. 122. to whom I am indebted for other assistance. Vaissette also thinks, that the inhabitants of towns in Languedoc were personally free in the tenth century, though those of the country were in servitude. *Hist. de Languedoc*, t. ii. p. 111.

† *Ordonnances des Rois*, ubi supra, p. 7. These charters are as old as 1110, but the precise date is unknown.

‡ The Benedictine historians of Languedoc are of opinion that the city of Nismes had municipal magistrates even in the middle of the tenth century. t. ii. p. 111. However this may be, the *citizens* of Narbonne are expressly mentioned in 1080. Appendix, p. 308. The *burgesses* of Carcassone appear by name in a charter of 1107. p. 515. In one of 1131, the *consuls* of Beziers are mentioned; they existed therefore previously, p. 409. and Appendix, p. 959. The magistrates of Antonin en Rouergue are named in 1136; those of Montpellier in 1142; of Narbonne in 1148; and of St. Giles in 1149. pp. 515. 432. 442. 464. The capitouls of Toulouse pretend to an extravagant antiquity; but were in fact established by Alfonso count of Toulouse, who died in 1148. In 1152, Raymond V. confirmed the regulations made by the common

towns in the royal domains were successively admitted to the same privileges during the reigns of Louis VI. Louis VII. and Philip Augustus.

council of Toulouse, which became the foundation of the customs of that city. p. 472.

If we may trust altogether to the *Assises de Jérusalem* in their present shape, the court of burgesses having jurisdiction over persons of that rank, was instituted by Godfrey of Bouillon, who died 1102. *Ass. de Jérus. c. 2.* This would be even earlier than the charter of London, granted by Henry I. in 1133. Lord Lyttleton goes so far as to call it "certain, that in England many cities and towns were bodies corporate and communities long before the alteration introduced into France by the charters of Louis le Gros." *Hist. of Henry II. vol. iv. p. 29.* But this position, as I shall more particularly shew in another place, is not borne out by any good authority, if it extends to internal jurisdiction, and management of their own police; whereof, except in the instance of London, we have no proof before the reign of Henry II.

But the incorporation of communities seems to have been decidedly earlier in Spain than in any other country. Alfonso V. in 1022, granted a charter to Leon, which is said to mention the common council of that city in terms that shew it to be an established institution. During the latter part of the eleventh century, as well as in subsequent times, such charters are very frequent. Marina, *Ensayo Historico-Critico sobre las siete partidas.* In several instances, we find concessions of smaller privileges to towns, without any political power. Thus Berenger, count of Barcelona, in 1025, confirms to the inhabitants of that city all the franchises which they already possess. These seem however to be confined to exemption from paying rent, and from any jurisdiction below that of an officer deputed by the count. *De Marca, Marca Hispanica, p. 1038.* Another grant occurs in the same volume, p. 909, from the bishop of Barcelona in favour of a town of his diocese. By some inattention, Robertson has quoted these charters as granted to "two villages in the county of Rousillon." *Hist Charles V. note 16.* The charters of Tortosa and Lerida in 1149 do not contain any grant of jurisdiction, p. 1303.

This example was gradually followed by the peers and other barons; so that by the end of the thirteenth century, the custom had prevailed over all France. It has been sometimes imagined, that the crusades had a material influence in promoting the erection of communities. Those expeditions would have repaid Europe for the prodigality of crimes and miseries which attended them, if this notion were founded in reality. But I confess, that in this as in most other respects their beneficial consequences ap-

The corporate towns in France and England always enjoyed fuller privileges, than these Catalonian charters impart. The essential characteristics of a commune, according to M. de Bréquigny, were: an association confirmed by charter; a code of fixed sanctioned customs; and a set of privileges, always including municipal, or elective government. Ordonnances, *ubi supra*, p. 3. A distinction ought however to be pointed out, which is rather liable to elude observation, between communes, or corporate towns, and boroughs (*bourgeoisies*). The main difference was, that in the latter there was no elective government, the magistrates being appointed by the king, or other superior. In the possession of fixed privileges and exemptions, in the personal liberty of their inhabitants, and in the certainty of their legal usages, there was no distinction between corporate towns and mere boroughs; and indeed it is agreed, that every corporate town was a borough, though every borough was not a corporation.\* The French antiquary quoted above does not trace these inferior communities or boroughs, higher than the charters of Louis VI. But we find the name, and a good deal of the substance, in England under William the Conqueror, as is manifest from Domesday Book.

\* The preface to the twelfth volume of *Ordonnances des Rois* contains a full account of *bourgeoisies*, as that to the eleventh does of *communes*. A great part of it however is applicable to both species, or rather to the genus and species. See too that of the fourteenth volume of *Recueil des Historiens*. p. 74.

pear to me very much exaggerated. The cities of Italy obtained their internal liberties by gradual encroachments, and by the concessions of the Franco-nian emperors. Those upon the Rhine owed many of their privileges to the same monarchs, whose cause they had espoused in the rebellions of Germany. In France, the charters granted by Louis the Fat could hardly be connected with the first crusade, in which the crown had taken no part, and were long prior to the second. It was not till fifty years afterwards, that the barons seem to have trod in his steps by granting charters to their vassals, and these do not appear to have been particularly related in time to any of the crusades. Still less can the corporations, erected by Henry II. in England, be ascribed to these holy wars, in which our country had hitherto taken no considerable share.

The establishment of chartered towns in France has also been ascribed to deliberate policy. "Louis the Gross," says Robertson, "in order to create some power that might counterbalance those potent vassals who controuled, or gave law to the crown, first adopted the plan of conferring new privileges on the towns situated within his own domain." Yet one does not immediately perceive, what strength the king could acquire by granting these extensive privileges within his own domains, if the great vassals were only weakened, as he asserts afterwards, by following his example. In what sense, besides, can it be meant, that Noyon or Amiens, by obtaining certain franchises, became a power, that could coun-

terbalance the duke of Normandy, or count of Champagne? It is more natural to impute this measure, both in the king and his barons, to their pecuniary exigencies; for we could hardly doubt that their concessions were sold at the highest price, even if the existing charters did not exhibit the fullest proof of it.\* It is obvious, however, that the coarser methods of rapine must have grown obsolete, and the rights of the inhabitants of towns to property established, before they could enter into any compact with their lord for the purchase of liberty. Guibert, abbot of St. Nogent near Laon, relates the establishment of a community in that city with circumstances that, in the main, might probably occur in any other place. Continual acts of violence and robbery having been committed, which there was no police adequate to prevent, the clergy and principal inhabitants agreed to enfranchise the populace, for a sum of money, and to bind the whole society by regulations for general security. These conditions were gladly accepted; the money was paid, and the leading men swore to maintain the privileges of the inferior freemen. The bishop of Laon, who happened to be absent, at first opposed this new institution, but was ultimately induced by money to take a similar oath; and the community was confirmed by the king. Unluckily for himself, the bishop afterwards annulled the charter; when the inhabitants, in despair at seeing themselves reduced to servitude, rose and mur-

\* *Ordonnances des Rois*, t. xi. préface, p. 18. et 50.

dered him. This was in 1112; and Guibert's narrative certainly does not support the opinion, that charters of community proceeded from the policy of the government. He seems to have looked upon them with the jealousy of a feudal abbot, and blames the bishop of Amiens for consenting to such an establishment in his city, from which, according to Guibert, many evils resulted. In his sermons, we are told, this abbot used to descant on "those execrable communities, where serfs against law and justice withdraw themselves from the power of their lords."\*

In some cases they were indebted for success to their own courage and love of liberty. Oppressed by the exactions of their superiors, they had recourse to arms, and united themselves in a common league confirmed by oath, for the sake of redress. One of these associations took place at Mans as early as 1067, and, though it did not produce any charter of privileges, is a proof of the spirit to which ultimately the superior classes were obliged to submit.† Several charters bear witness, that this spirit of resistance was justified by oppression. Louis VII. frequently declares the tyranny exercised over the towns to be his motive for enfranchising them. Thus the charter of Mantes in 1150 is said to be given *pro nimia oppressione pauperum*: that of Compiègne in 1153, *propter enormitates clericorum*: that of Dourlens, granted by the count of Ponthieu in 1202, prop-

\* Hist. Littéraire de la France, t. x. p. 448. Du Cange, *voc. Communia*.

† Recueil des Historiens, t. xiv. préface, p. 66.



ter injurias et molestias a potentibus terræ burgensibus frequenter illatas.\*

The privileges which these towns of France derived from their charters were surprizingly extensive; especially if we do not suspect some of them to be merely in confirmation of previous usages. They were made capable of possessing common property, and authorized to use a common seal as the symbol of their incorporation. The more oppressive and ignominious tokens of subjection, such as the fine paid to the lord for permission to marry their children, were abolished. Their payments of rent or tribute were limited both in amount and as to the occasions when they might be demanded; and these were levied by assessors of their own electing. Some obtained an exemption from assisting their lord in war; others were only bound to follow him when he personally commanded; and almost all limited their service to one, or at the utmost very few days. If they were persuaded to extend its duration, it was, like that of feudal tenants, at the cost of their superior. Their customs, as to succession and other matters of private right, were reduced to certainty, and, for the most part, laid down in the charter of incorporation. And the observation of these was secured by the most valuable privilege which the chartered towns obtained; that of exemption from the jurisdiction, as well of the royal, as the territorial judges. They were subject only to that of magistrates, either

\* Ordonnances des Rois, t. xi. préface, p. 17.

wholly elected by themselves, or, in some places, with a greater or less participation of choice in the lord. They were empowered to make special rules, or, as we call them, bye-laws, so as not to contravene the provisions of their charter, or the ordinances of the king.\*

It was undoubtedly far from the intention of those barons who conferred such immunities upon their subjects, to relinquish their own superiority, and rights not expressly conceded. But a remarkable change took place in the beginning of the thirteenth century, which affected, in a high degree, the feudal constitution of France. Towns, distrustful of their lord's fidelity, sometimes called in the king as guarantee of his engagements. This first stage of royal interference led to a more extensive measure. Philip Augustus granted letters of safe-guard to communities dependent upon the barons, assuring to them his own protection and patronage.† And this was followed up so quickly by the court, if we believe some writers, that, in the next reign, Louis VIII. pretended to the immediate sovereignty over all chartered towns, in exclusion of their original lords.‡ Nothing;

\* *Ordonnances des Rois, préfaces aux tomes xi. et xii.* Du Cange, *loc. Communia, Hostis.* Carpentier, *Suppl. ad Du Cange, v. Hostis.* Mably, *Observations sur l'Hist. de France, l. iii. c. 7.*

† Mably, *ibid.*

‡ *Reputabat civitates omnes suas esse, in quibus communiæ essent.* I mention this in deference to Du Cange, Mably and others, who assume the fact as incontrovertible; but the passage is only in a monkish chronicler, whose authority, were it

perhaps, had so decisive an effect in subverting the feudal aristocracy. The barons perceived too late, that, for a price long since lavished in prodigal magnificence, or useless warfare, they had suffered the source of their wealth to be diverted, and the nerves of their strength to be severed. The government prudently respected the privileges secured by charter. Philip the Long established an officer in all large towns to preserve peace by an armed police; but, though subject to the orders of the crown, he was elected by the burgesses; and they took a mutual oath of fidelity to each other. Thus shielded under the king's mantle, they ventured to encroach upon the neighbouring lords, and to retaliate for the long oppression of the commonalty.\* Every citizen was

even more explicit, would not weigh much in a matter of law. Beaumanoir, however, sixty years afterwards, lays it down, that no one can erect a commune without the king's consent. c. 50. p. 268. And this was an unquestionable maxim in the fourteenth century. *Ordonnances*, t. xi. p. 29.

\* In the charter of Philip Augustus to the town of Roze in Picardy, we read: If any stranger, whether noble or villein, commits a wrong against the town, the mayor shall summon him to answer for it, and if he does not obey the summons, the mayor and inhabitants may go and destroy his house, in which we (the king) will lend them our assistance, if the house be too strong for the burgesses to pull down: except the case of one of our vassals, whose house shall not be destroyed; but he shall not be allowed to enter the town, till he has made amends at the discretion of the mayor and jurats. *Ordonnances des Rois*, t. xi. p. 228. This summary process could only, as I conceive, be employed, if the house was situated within the jurisdiction of the commune. See charter of Crespy, *id.* p. 253. In other cases, the application for redress was to be made in the first instance to the lord of the territory wherein the delinquent re-

bound by oath to stand by the common cause against all aggressors, and this obligation was abundantly fulfilled. In order to swell their numbers, it became the practice to admit all who came to reside within their walls to the rights of burghership, even though they were villeins, appurtenant to the soil of a master, from whom they had escaped.\* Others, having obtained the same privileges, continued to dwell in the country; but, upon any dispute with their lords, called in the assistance of their community. Philip the Fair, erecting certain communes in Languedoc, gave to any who would declare on oath that he was aggrieved by the lord or his officers, the right of being admitted a burgess of the next town, upon paying one mark of

sided. But upon his failing to enforce satisfaction, the mayor and jurats might satisfy themselves; *liceat justitiam quærere, prout poterunt*; that is, might pull down his house, provided they could. Mably positively maintains the communes to have had the right of levying war. l. iii. c. 7. And Bréquigny seems to coincide with him. *Ordonnances*, préface, p. 46. See also *Hist. de Languedoc*, t. iii. p. 115. The territory of a commune was called *Pax*; (p. 185.) an expressive word.

\* One of the most remarkable privileges of chartered towns was that of conferring freedom on runaway serfs, if they were not reclaimed by their masters within a certain time. This was a pretty general law. *Si quis natus quietè per unum annum et unum diem in aliquâ villa privilegiatâ manserit, ita quod in eorum communem gyldam tanquam civis receptus fuerit, eo ipso à villenagio liberabitur.* Glanvil, l. v. c. 5. The cities of Languedoc had the same privilege. *Vaissette*, t. iii. p. 528. 530. And the editor of the *Ordonnances* speaks of it as general. p. 44. A similar custom was established in Germany; but the term of prescription was, in some places at least, much longer than a year and a day. *Pfeffel*. t. i. p. 294.

silver to the king, and purchasing a tenement of a definite value. But the neglect of this condition, and several other abuses, are enumerated in an instrument of Charles V., redressing the complaints made by the nobility and rich ecclesiastics of the neighbourhood.\* In his reign, the feudal independence had so completely yielded, that the court began to give into a new policy, which was ever after pursued; that of maintaining the dignity and privileges of the noble class against those attacks which wealth and liberty encouraged the plebians to make upon them.

The maritime towns of the south of France entered into separate alliances with foreign states, as Narbonne with Genoa in 1166; and Montpellier in the next century. At the death of Raymond VII. Avignon, Arles and Marseilles affected to set up separate republics; but they were soon brought into subjection.† The independent character of maritime towns was not peculiar to those of the southern provinces. Edward II. and Edward III. negotiated, and entered into alliances with the towns of Flanders, to which neither their count, nor the king of France, were parties.‡ Even so late as the reign of Louis XI., the duke of Burgundy did not hesitate to address the citizens of Rouen, in consequence of the capture of some ships, as if they had formed an independent state.§ This evidently arose out of the ancient cus-

\* Martenne, Thesaur. Anecd. t. i. p. 1515.

† Velly, t. iv. p. 446. t. v. p. 97.

‡ Rymer, t. iv. passim.

§ Garnier, t. xvii. p. 396.

toms of private warfare, which, long after they were repressed by a stricter police at home, continued with lawless violence on the ocean, and gave a character of piracy to the commercial enterprize of the middle ages.

Notwithstanding the forces which in opposite directions assailed the feudal system, from the enhancement of royal prerogative, and the elevation of the chartered towns, its resistance would have been much longer, but for an intrinsic decay. No political institution can endure, which does not rivet itself to the hearts of men, by ancient prejudice, or acknowledged interest. The feudal compact had originally much of this character. Its principle of vitality was warm and active. In fulfilling the obligations of mutual assistance and fidelity by military service, the energies of friendship were awakened, and the ties of moral sympathy superadded to those of positive compact. While private wars were at their height, the connexion of lord and vassal grew close and cordial, in proportion to the keenness of their enmity towards others. It was not the object of a baron to disgust and impoverish his vassals by enhancing the profits of seigniorial ; for there was no rent of such price as blood, nor any labour so serviceable as that of the sword.

But the nature of feudal obligation was far better adapted to the partial quarrels of neighbouring lords than to the wars of kingdoms. Customs, founded upon the poverty of the smaller gentry, had limited their martial duties to a period never exceeding

forty days, and diminished according to the subdivisions of the fief. They could undertake an expedition, but not a campaign; they could burn an open town, but had seldom leisure to besiege a fortress. Hence, when the kings of France and England were engaged in wars, which, on our side at least, might be termed national, the inefficiency of the feudal militia became evident. It was not easy to employ the military tenants of England upon the frontiers of Normandy and the Isle of France, within the limits of their term of service. When under Henry II. and Richard, the scene of war was frequently transferred to the Garonne or the Charente, this was still more impracticable. The first remedy to which sovereigns had recourse, was to keep their vassals in service after the expiration of their forty days, at a stipulated rate of pay.\* But this was frequently neither convenient to the tenant, anxious to return back to his household, nor to the king, who could not readily defray the charges of an army.† Something was to be devised more adequate to the exigency, though less suitable to the feudal spirit. By the feudal law, the fief was, in strictness, forfeited by neglect of attendance upon the lord's expedition. A milder

\* Du Cange, et Carpentier, voc. Hostis.

† There are several instances, where armies broke up, at the expiration of their limited term of service, in consequence of disagreement with the sovereign. Thus, at the siege of Avignon in 1226, Theobald count of Champagne retired with his troops, that he might not promote the king's designs upon Languedoc. At that of Angers in 1230, nearly the same thing occurred. M. Paris, p. 308.

usage introduced a fine, which, however, was generally rather heavy, and assessed at discretion. An instance of this kind has been noticed in an earlier part of the present chapter, from the muster-roll of Philip the Bold's expedition against the count de Foix. The first Norman king of England made these amercements very oppressive. But when a pecuniary payment became the regular course of redeeming personal service, which, under the name of escuage, may be referred to the reign of Henry II., it was essential to liberty, that the military tenant should not lie at the mercy of the crown.\* Accordingly, one of the most important provisions contained in the Magna Charta of John, secures the assessment of escuage in parliament. This is not renewed in the charter of Henry III., but the practice during his reign was conformable to its spirit.

The feudal military tenures had superseded that earlier system of public defence, which called upon every man, and especially every land-holder, to protect his country.† The relations of a vassal came in

\* Madox, *Hist. of Exchequer*, c. 16. conceives that escuage may have been levied by Henry I.; the earliest mention of it, however, in a record is under Henry II. in 1159. Lyttleton's *Hist. of Henry II.* vol. iv. p. 13.

† Every citizen, however restricted may be his privileges, is naturally bound to repel invasion. A common rising of the people in arms, though not always the most convenient mode of resistance, is one to which all governments have a right to resort. *Volumus*, says Charles the Bald, *ut cujuscunque nostrum homo, in cujuscunque regno sit, cum seniore suo in hostem, vel aliis suis utilitatibus pergat; nisi talis regni invasio. quam Lantweri dicunt, (quod absit) acciderit, ut omnis populus illius*



place of those of a subject and a citizen. This was the revolution of the ninth century. In the twelfth and thirteenth, another innovation, rather more gradually, prevailed, and marks the third period in the military history of Europe. Mercenary troops were

regni ad eam repellendam communiter pergat. Baluzii Capitularia, t. ii. p. 44. This very ancient mention of the *Landwehr*, or insurrectional militia, so signally called forth in the present age, will strike the reader. The obligation of bearing arms in defensive war was peculiarly incumbent on the freeholder, or alodialist. It made part of the *trinoda necessitas* in England, erroneously confounded by some writers with a feudal military tenure. But when these latter tenures became nearly universal, the original principles of public defence were almost obliterated; and I know not how far alodial proprietors, where they existed, were called upon for service. Kings did not however always dispense with such aid as the lower people could supply. Louis the Fat called out the militia of towns and parishes under their priests, who marched at their head, though they did not actually command them in battle. In the charters of incorporation which towns received, the number of troops required was usually expressed. These formed the infantry of the French armies, perhaps more numerous than formidable to an enemy. In the war of the same prince with the emperor Henry V. all the population of the frontier provinces was called out; for the militia of the counties of Rheims and Chalons is said to have amounted to sixty thousand men. Philip IV. summoned one foot-soldier for every twenty hearths to take the field after the battle of Courtrai. (Daniel, *Hist. de la Milice Française*: Velly, t. iii. p. 62. t. ii. p. 287.) Commissions of array, either to call out the whole population, or, as was more common, to select the most serviceable by forced impressment, occur in English records from the reign of Edward I. (Stuart's *View of Society*, p. 400.) and there are even several writs directed to the bishops, enjoining them to cause all ecclesiastical persons to be arrayed and armed on account of an expected invasion. Rymer, t. vi. p. 726. (46 E. III.) t. vii. p. 162. (1. R. II.) and t. viii. p. 270. (3 H. IV.)

substituted for the feudal militia. Undoubtedly there could never have been a time, when valour was not to be purchased with money; nor could any employment of surplus wealth be more natural either to the ambitious or the weak. But we cannot expect to find numerous testimonies to facts of this description.\* In public and national history, I am aware of no instance of what may be called a regular army, (unless we consider the Antrustions of the Merovingian kings as such,) more ancient than the bodyguards, or huscarles, of Canute the Great. These select troops amounted to six thousand men, on whom he probably relied to ensure the subjection of England. A code of martial law compiled for their regulation is extant in substance; and they are reported to have displayed a military spirit of mutual union, of which their master stood in awe.† Harold II. is also said to have had Danish soldiers in pay. But

\* The preface to the eleventh volume of *Recueil des Historiens*, p. 232. notices the word *solidarii*, for hired soldiers, as early as 1030. It was probably unusual at that time; though in Roger Hoveden, Ordericus Vitalis, and other writers of the twelfth century, it occurs not very unfrequently. We may perhaps conjecture the abbots, as both the richest and the most defenceless, to have been the first who availed themselves of mercenary valour.

† For these facts, of which I remember no mention in English history, I am indebted to the Danish collection of Langebek, *Scriptores Rerum Danicarum Medii Ævi*. Though the *Leges Castrenses Canuti Magni*, published by him, t. iii. p. 141. are not in their original statutory form, they proceed from the pen of Sweno, the earliest Danish historian, who lived under Waldemar I., less than a century and a half after Canute. I apply the word *huscarle*, familiar in Anglo-Saxon documents, to these

the most eminent example in that age of a mercenary army is that by whose assistance William atchieved the conquest of England. Historians occur in representing this force to have consisted of sixty thousand men. He afterwards hired soldiers from various regions to resist an invasion from Norway. William Rufus pursued the same course. Hired troops did not, however, in general, form a considerable portion of armies, till the wars of Henry II. and Philip Augustus. Each of these monarchs took into pay large bodies of mercenaries, chiefly, as we may infer from their appellation of Brabançons, enlisted from the Netherlands. These were always disbanded on cessation of hostilities; and, unfit for any habits but of idleness and license, oppressed the peasantry and ravaged the country without controul. But their soldier-like principles of indiscriminate obedience, still more than their courage and field-discipline, rendered them dear to kings, who dreaded

military retainers, on the authority of Langebek in another place. t. ii. p. 454. The object of Canute's institutions was to produce an uniformity of discipline and conduct among his soldiers, and thus to separate them more decidedly from the people. They were distinguished by their dress and golden ornaments. Their manners towards each other were regulated; quarrels and abusive words subjected to a penalty. All disputes, even respecting lands, were settled among themselves at their general parliament. A singular story is told, which, if false, may still illustrate the traditionary character of these guards; that Canute having killed one of their body in a fit of anger, it was debated whether the king should incur the legal penalty of death; and this was only compromised by his kneeling on a cushion before the assembly, and awaiting their permission to rise. t. iii. p. 150.

the free spirit of a feudal army. It was by such a foreign force, that John saw himself on the point of abrogating the Great Charter, and reduced his barons to the necessity of tendering the kingdom to a prince of France.\*

It now became manifest, that the probabilities of war inclined to the party, who could take the field with selected and experienced soldiers. The command of money was the command of armed hirelings, more sure and steady in battle, as we must confess with shame, than the patriot citizen. Though the nobility still composed the strength of an army, yet they served in a new character; their animating spirit was that of chivalry, rather than of feudal tenure; their connexion with a superior was personal, rather than territorial. The crusades had probably a material tendency to effectuate this revolution, by substituting, what was inevitable in those expeditions, a voluntary stipendiary service for one of absolute obligation.† It is the opinion of Daniel, that in the thirteenth century all feudal tenants received pay, even during their prescribed term of service.‡ This does not appear consonant to the law of fiefs; yet

\* Matt. Paris.

† Joinville, in several passages, intimates that most of the knights serving in St. Louis's crusade received pay, either from their superior lord, if he were on the expedition, or from some other, into whose service they entered for the time. He set out himself with ten knights, whom he afterwards found it difficult enough to maintain. *Collection des Mémoires*, t. i. p. 49. and t. ii. p. 53.

‡ *Hist. de la Milice Française*, p. 84.

The use of mercenary troops prevailed much in Germany

their poverty may often have rendered it impossible to defray the cost of equipment on distant expeditions. A large proportion of the expense must in all cases have fallen upon the lord; and hence that perpetually increasing taxation, the effects whereof we have lately been investigating.

A feudal army, however, composed of all tenants in chief and their vassals, still presented a formidable array.. It is very long before the paradox is generally admitted, that numbers do not necessarily contribute to the intrinsic efficiency of armies. Philip IV. assembled a great force by publishing the *arrière-ban*, or feudal summons, for his unhappy expedition against the Flemings. A small and more disciplined body of troops would not, probably, have met with the discomfiture of Courtray. Edward I. and Edward II. frequently called upon those who owed military service, in their invasions of Scotland.\* But in the French wars of Edward III. the whole I think of his army served for pay, and was raised by contract with men of rank and influence, who received wages for every soldier according to his station and the arms he bore. The rate of pay was so remarkably high, that, unless we imagine a vast profit to have been intended for the contractors, the private lancers and even archers must have been chiefly taken from the middling classes, the smaller

during the thirteenth century. Schmidt, t. iv. p. 89. In Italy, it was also very common; though its general adoption is to be referred to the commencement of the succeeding age.

\* Rymer, t. ii. p. 173. 189. 199. et alibi sæpius.

gentry, or rich yeomanry of England.\* This part of Edward's military system was probably a leading cause of his superiority over the French, among whom the feudal tenantry were called into the field, and swelled their unwieldy arms at Crecy and Poitiers. Both parties, however, in this war employed mercenary troops. Philip had 15,000 Italian cross bow men at Crecy. It had for some time before become the trade of soldiers of fortune, to enlist under leaders of the same description as themselves in companies of adventure, passing from one service to another, unconcerned as to the cause in which they were retained. These military adventurers played a more remarkable part in Italy than in France, though not a little troublesome to the latter country. The feudal tenures had at least furnished a loyal native militia, whose duties, though much limited in extent, were defined by usage, and enforced by principle. They gave place in an evil hour for the people, and eventually for sovereigns, to contracts with mutinous hirelings, frequently strangers, whose valour in the day of battle inadequately redeemed their bad faith

\* Many proofs of this may be adduced from Rymer's Collection. The following is from Brady's History of England, vol. ii. Appendix, p. 86. The wages allowed by contract, in 1346, were for an earl, 6s. 8d. per day; for barons and bannerets, 4s.; for knights, 2s.; for squires, 1s.; for archers and hobelers (light cavalry,) 6d.; for archers on foot, 3s.; for Welshmen, 2d. These sums, multiplied by about 24, to bring them on a level with the present value of money, will shew the pay to have been extremely high. The cavalry, of course, furnished themselves with horses and equipments, as well as arms, which were very expensive.

and vexatious rapacity. France, in her calamitous period under Charles VI. and Charles VII. experienced the full effects of military licentiousness. At the expulsion of the English, robbery and disorder were substituted for the more specious plundering of war. Perhaps few measures have ever been more popular, as few certainly have been more politic, than the establishment of regular companies of troops by an ordinance of Charles VII. in 1444.\* These may justly pass for the first example of a standing army in Europe; though some Italian princes had retained troops constantly in their pay, but prospectively to hostilities, which were seldom long intermitted. Fifteen companies were composed each of a hundred men at arms, or lancers; and, in the language of that age, the whole body was one thousand five hundred lances. But each lancer had three archers, a couillier, or soldier armed with a knife, and a page or valet attached to him, all serving on horseback; so that the fifteen companies amounted to nine thousand cavalry.† From these small beginnings, as they must appear in modern times, arose the regular army of France, which every succeeding king was solicitous to augment. The ban was sometimes convoked, that is, the possessors of fiefs were called upon for military service in subsequent ages; but with more of ostentation, than with real efficiency.

\* The estates at Orleans in 1439 had advised this measure, as is recited in the preamble of the ordinance. *Ordonnances des Rois*, t. xii. p. 312.

† Daniel, *Hist. de la Milice Française*, p. 266. Villaret, *Hist. de France*, t. xv. p. 394.

The feudal compact, thus deprived of its original efficacy, soon lost the respect and attachment which had attended it. Homage and investiture became unmeaning ceremonies; the incidents of relief and aid were felt as burthensome exactions. And indeed the rapacity with which these were levied, especially by our Norman sovereigns and their barons, was of itself sufficient to extinguish all the generous feelings of vassalage. Thus galled, as it were, by the armour which he was compelled to wear, but not to use, the military tenant of England looked no longer with contempt upon the owner of land in socage, who held his estate with almost the immunities of an allodial proprietor. But the profits which the crown reaped from wardships, and perhaps the prejudices of lawyers, prevented the abolition of military tenures till the restoration of Charles II. In France, the fiefs of noblemen were very unjustly exempted from all territorial taxation; though the *tailles* of later times had, strictly speaking, only superseded the aids to which they had been always liable. This distinction, it is well known, was not annihilated till that event, which annihilated all distinctions, the French revolution.

It is remarkable, that, although the feudal system established in England upon the conquest broke in very much upon our ancient Saxon liberties; though it was attended with harsher servitudes than in any other country, particularly those two intolerable burthens, wardships and marriage; yet it has in general been treated with more favour by English than



French writers. The hardness with which the ancient barons resisted their sovereign, and the noble struggles which they made for civil liberty, especially in that Great Charter, the basement at least, if not the foundation, of our free constitution, have met with a kindred sympathy in the bosoms of Englishmen; while from an opposite feeling, the French have been shocked at that aristocratic independence, which cramped the prerogatives, and obscured the lustre of their crown. Yet it is precisely to this fental policy, that France is indebted for that which is ever dearest to her children; their national splendour and power. That kingdom would have been irretrievably dismembered in the tenth century, if the laws of feudal dependance had not preserved its integrity. Empires of unwieldy bulk, like that of Charlemagne, have several times been dissolved by the usurpation of provincial governors, as is recorded both in ancient history and in that of the Mahometan dynasties in the east. What question can there be, that the powerful dukes of Guienne or counts of Toulouse would have thrown off all connexion with the crown of France, when usurped by one of their equals, if the slight dependance of vassalage had not been substituted for legitimate subjection to a sovereign?

It is the previous state of society under the grandchildren of Charlemagne, which we must always keep in mind, if we would appreciate the effects of the feudal system upon the welfare of mankind. The institutions of the eleventh century must be

compared with those of the ninth, not with the advanced civilization of modern times. If the view that I have taken of those dark ages is correct, the state of anarchy, which we usually term feudal, was the natural result of a vast and barbarous empire feebly administered, and the cause, rather than effect of the general establishment of feudal tenures. These, by preserving the mutual relations of the whole, kept alive the feeling of a common country and common duties; and settled, after the lapse of ages, into the free constitution of England, the firm monarchy of France, and the federal union of Germany.

The utility of any form of polity may be estimated, by its effect upon national greatness and security, upon civil liberty and private rights, upon the tranquillity and order of society, upon the increase and diffusion of wealth, or upon the general tone of moral sentiment and energy. The feudal constitution was certainly, as has been observed already, little adapted for the defence of a mighty kingdom, far less for schemes of conquest. But as it prevailed alike in several adjacent countries, none had any thing to fear from the military superiority of its neighbours. It was this inefficiency of the feudal militia, perhaps, that saved Europe during the middle ages from the danger of universal monarchy. In times, when princes had little notion of confederacies for mutual protection, it is hard to say, what might not have been the successes of an Otho the Great, a Frederic Barbarossa, or a Philip Augustus, if they could have

wielded the whole force of their subjects whenever their ambition required. If an empire equally extensive with that of Charlemagne, and supported by military despotism, had been formed about the twelfth or thirteenth centuries, the seeds of commerce and liberty, just then beginning to shoot, would have perished; and Europe, reduced to a barbarous servitude, might have fallen before the free barbarians of Tartary.

If we look at the feudal polity as a scheme of civil freedom, it bears a noble countenance. To the feudal law it is owing, that the very names of right and privilege were not swept away, as in Asia, by the desolating hand of power. The tyranny which, on every favourable moment, was breaking through all barriers, would have rioted without controul, if, when the people were poor and disunited, the nobility had not been brave and free. So far as the sphere of feudality extended, it diffused the spirit of liberty, and the notions of private right. Every one, I think, will acknowledge this, who considers the limitations of the services of vassalage, so cautiously marked in those law-books which are the records of customs, the reciprocity of obligation between the lord and his tenant, the consent required in every measure of a legislative or general nature, the security, above all, which every vassal found in the administration of justice by his peers, and even (we may in this sense say) in the trial by combat. The bulk of the people, it is true, were degraded by servitude; but this had no connexion with the feudal tenures.

The peace and good order of society were not promoted by this system. Though private wars did not originate in the feudal customs, it is impossible to doubt, that they were perpetuated by so convenient an institution, which indeed owed its universal establishment to no other cause. And as predominant habits of warfare are totally irreconcilable with those of industry, not merely by the immediate works of destruction which render its efforts unavailing, but through that contempt of peaceful occupations which they produce, the feudal system must have been intrinsically adverse to the accumulation of wealth, and the improvement of those arts, which mitigate the evils or abridge the labours of mankind.

But as a school of moral discipline, the feudal institutions were perhaps most to be valued. Society had sunk, for several centuries after the dissolution of the Roman empire, into a condition of utter depravity; where, if any vices could be selected as more eminently characteristic than others, they were falsehood, treachery and ingratitude. In slowly purging off the lees of this extreme corruption, the feudal spirit exerted its ameliorating influence. Violation of faith stood first in the catalogue of crimes, most repugnant to the very essence of a feudal tenure, most severely and promptly avenged, most branded by general infamy. The feudal law-books breathe throughout a spirit of honourable obligation. The feudal course of jurisdiction promoted, what trial by peers is peculiarly calculated to promote, a keener feeling and readier perception of moral as

well as of legal distinctions. And as the judgment and sympathy of mankind are seldom mistaken, in these great points of veracity and justice, except through the temporary success of crimes, or the want of a definite standard of right, they gradually recovered themselves, when law precluded the one, and supplied the other. In the reciprocal services of lord and vassal, there was ample scope for every magnanimous and disinterested energy. The heart of man, when placed in circumstances which have a tendency to excite them, will seldom be deficient in such sentiments. No occasions could be more favourable, than the protection of a faithful supporter, or the defence of a beneficent suzerain, against such powerful aggression, as left little prospect except of sharing in his ruin.

From these feelings engendered by the feudal relation has sprung up the peculiar sentiment of personal reverence and attachment towards a sovereign, which we denominate loyalty; alike distinguishable from the stupid devotion of eastern slaves, and from the abstract respect with which free citizens regard their chief magistrate. Men who had been used to swear fealty, to profess subjection, to follow, at home and in the field, a feudal superior and his family, easily transferred the same allegiance to the monarch. It was a very powerful feeling, which could make the bravest men put up with slights and ill treatment at the hands of their sovereign; or call forth all the energies of disinterested exertion for one whom

they never saw, and in whose character there was nothing to esteem. In ages when the rights of the community were unfelt, this sentiment was one great preservative of society; and, though collateral or even subservient to more enlarged principles, it is still indispensable to the tranquillity and permanence of every monarchy. In a moral view, loyalty has scarcely perhaps less tendency to refine and elevate the heart than patriotism itself; and holds a middle place in the scale of human motives, as they ascend from the grosser inducements of self-interest, to the furtherance of general happiness, and conformity to the purposes of Infinite Wisdom.







